129-531
129-531

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. ~~387.~~ 116

THE CITY NATIONAL BANK OF FORT WORTH AND JOHN DAWSON, APPELLANTS,

vs.

R. D. HUNTER, A. G. EVANS AND M. P. BUEL, PARTNERS UNDER THE FIRM-NAME OF HUNTER, EVANS & CO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

FILED OCTOBER 13, 1885.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 387.

THE CITY NATIONAL BANK OF FORT WORTH AND JOHN DAWSON, APPELLANTS,

vs.

R. D. HUNTER, A. G. EVANS AND M. P. BUEL, PARTNERS UNDER THE FIRM-NAME OF HUNTER, EVANS & CO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

INDEX.

	Original.	Print.
Caption	1	1
Transcript from State court	1	1
Opening order of the court	1	1
Continuance	2	1
Original petition	2	2
Affidavit of J. B. F. Sampsel	5	3
Bond for writ of sequestration	7	4
Citation to John Dawson	8	4
Sheriff's return	9	5
Writ of sequestration	9	5
Sheriff's return	11	6
Citation to John A. O'Neal	12	6
Sheriff's return	13	7
Defendants' replevy bond	14	7
Affidavit for supplemental writ of sequestration	16	9
Bond " " " "	18	10
Original answer of John Dawson	19	10
Affidavit of J. B. F. Sampsel	19	11
Replevy bond of John A. O'Neal	20	11
Supplemental writ of sequestration	22	12
Sheriff's return	23	12

JUDD & DETWEILER, PRINTERS, WASHINGTON, FEBRUARY 1, 1888.

	Original.	Print.
Precepts	25	13
Replevy bond of Hunter, Evans & Co.	27	14
Opening order of court	29	16
Order for removal	30	16
Original answer of John A. Oneal	31	16
Demurrer of John A. Oneal	44	21
Amended original answer of John Dawson	47	23
Motion to quash affidavit and bond for writ of sequestration	73	34
Motion to quash writ of sequestration and sheriff's return	74	34
Agreement to fix cause for trial, &c.	75	35
Petition for removal	76	35
Bond for removal	77	36
Exceptions to plea of Oneal to jurisdiction	78	36
Motion to strike out demurrer	79	37
Exceptions to answers	80	37
Motion to remand	83	39
Appearance of City National Bank of Fort Worth	84	39
Demurrer of Oneal to original and amended bills	84	40
Demurrer of Dawson and the City National Bank to original and amended bills	86	41
Amended bill	89	42
Exhibit A—Bill of sale of John A. Oneal to Hunter, Evans & Co., Aug. 20, 1879	116	53
B—Agreement of Hunter, Evans & Co. and John A. Oneal, Aug. 20, 1879	121	56
C—Agreement of Hunter, Evans & Co., the City National Bank of Fort Worth, and John A. Oneal, March 20, 1880	122	56
D—Agreement of John M. Dawson, Hunter, Evans & Co., and the City National Bank, March 20, 1880	126	58
E—Account of John A. Oneal with Hunter, Evans & Co.	130	60
Agreement as to evidence, pleadings, &c.	135	67
Amended answer of City National Bank and Dawson	136	67
Bill of revivor	175	82
Appearance of Mary Oneal	176	83
Agreement for publication of testimony	177	84
Evidence for complainants	177	84
Testimony of R. D. Hunter	178	84
Exhibit "1"—Letter of Hunter, Evans & Co. to Oneal, May 27, 1879	205	95
"2"—Letter of Hunter, Evans & Co. to Oneal, June 12, 1879	206	95
"3"—Letter of Hunter, Evans & Co. to Oneal, June 18, 1879	207	96
"4"—Letter of Hunter, Evans & Co. to Oneal, June 23, 1879	207	96
"5"—Letter of Hunter, Evans & Co. to Oneal, July 8, 1879	208	96
"6"—Letter of Hunter, Evans & Co. to Oneal, Sept. 6, 1879	208	97
"7"—Letter of Hunter, Evans & Co. to Oneal, Sept. 9, 1879	211	98

	Original.	Print.
Testimony of Lewis W. Evans	211	98
Exhibit "A"—Account of John A. Oneal with Hunter, Evans & Co.	225	103
"B"—(Not set out—see Exhibit C to bill)	235	109
"D"—Letter of Hunter, Evans & Co. to Oneal, Sept. 15, 1879	235	110
"E"—Letter of McCulloch to Hunter, Evans & Co., May 24, 1880	236	110
Testimony of M. P. Buel	237	111
Exhibit "Y"—Account of sales of 280 cattle sold for Oneal Sept. 12, 1880	255	118
"Z"—Sheriff's receipt to Sampsel, July 21, 1880	256	118
Testimony of F. W. Flato, Jr.	256	118
A. G. Evans	272	125
W. Hunter	278	127
Exhibit "A"—Notes and drafts of W. Hunter, &c.	289	131
Testimony of A. T. Watts	295	135
J. B. F. Sampsel	324	146
Schedule "A"—(Not set out—see p. 116)	348	156
"B"—Drafts, &c., of Oneal	348	156
"C"—Letters of Oneal to Hunter, Evans & Co., Aug. 30 and Oct. 18, 1879	384	177
"D"—Account of Oneal & Jones with Hunter, Evans & Co., &c.	385	177
"E"—Two notes of Oneal, Aug 22, 1879	393	182
"F"—Bills of Sadler & Co. and Philadelphia Stock Yard Co.	393	183
"G"—Bills of Robert Strahorn & Co.	394	183
"I"—Certificate of stock inspection, Sept. 19, 1879. Letter of O'Neal to Hunter & Evans, Feb. 15, 1880	395	184
	396	184
Evidence for defendants	397	185
Testimony of Robert McCart	397	185
S. W. Lomax	397	185
A. M. Britton	397	185
John Nichols	397	185
John Dawson	444	203
Robert McCart (cross)	462	210
S. W. Lomax (cross)	462	210
A. M. Britton (cross)	463	210
John Nichols (cross)	463	210
John Dawson (cross)	488	220
Exhibit No. 1 "S. W. L."—Letter of McCulloch to City National Bank, May 24, 1880	494	222
No. 2 " —Letter of McCulloch to City National Bank, May 26, 1880	495	223
No. 3 " —Letter of McCulloch to City National Bank, June 7, 1880	497	223
No. 4 " —Letter of McCulloch to City National Bank, June 17, 1880	497	224
No. 5 " —Letter of McCulloch to City National Bank, June 25, 1880	498	224

	Original.	Print.
Exhibit No. 6 "S. W. L."—Letter of McCulloch to City National Bank, July 3, 1880	499	224
" —Draft of McCulloch on Hunter, Evans & Co.	500	225
" —Receipt of McCulloch to City National Bank, May 14, 1880	501	225
"A" " —Bill of sale from Oneal to Nichols, Dec. 10, 1879	501	225
" —Note of Oneal to Nichols, Dec. 10, 1879	503	226
"B" "A. M. B."—Agreement between John M. Dawson, Hunter, Evans & Co., and City National Bank, March 20, 1880	504	227
"C" " —Agreement between John A. Oneal, City National Bank, and Hunter, Evans & Co., March 20, 1880	507	228
Testimony of John Oneal	511	230
J. C. Kearby	511	230
A. B. Allen	511	230
John M. Lillard	511	230
Exhibit "A" (Oneal)—(Not set out—see p. 116)	565	251
"A" (Kearby)—(Not set out—see p. 122)	565	251
"C" (Kearby)— " " 126)	565	251
"B" (Kearby)—Agreement of Oneal and Dawson, M'ch 20, 1880	565a	251
"A" (Allen)—Certificate of stock inspection, May 22, 1880	566	252
Bill of sale from Oneal to Dawson, May 22, 1880	568	253
"A" (Lillard)—Account of Oneal & Downing with Hunter, Evans & Co.	570	253
"B^1" " —Account of Oneal with City National Bank	570	253
"B^2" " —Account of Oneal with City National Bank	571	255
"C^1" " —Acc't of Hunter, Evans & Co. with Oneal	572	256
"C^2" " — " " "	572	257
"C^3" " — " " "	572	257
"C^4" " — " " "	573	258
"C^5" " — " " "	573	258
"C^6" " — " " "	573	259
"C^7" " — " " "	574	259
"C^8" " — " " "	574	260
"C^9" " — " " "	574	260
"C^{10}" " — " " "	575	261
"C^{11}" " — " " "	575	261
"C^{12}" " — " " "	576	262
"C^{13}" " —Account of Hunter, Evans & Co. with Oneal & Atkinson	576	263
"D" " —Receipt of Hunter, Evans & Co., Sept. 11, 1879	576	263

	Original.	Print.
Exhibit "E" (Lillard)—Account of Hunter, Evans & Co. with Oneal	577	233
Testimony of Henry E. McCulloch	584	269
Exhibit "A" (McCulloch)—(Not set out—see p. 122)	620	284
"B" " — " " 126)	620	284
Final decree	621	285
Petition for allowance of appeal	624	286
Order allowing appeal	625	287
Appeal bond	626	287
Assignment of errors	629	288
Clerk's certificate	631	290

1 *Caption.*

MONDAY, *May 18th*, 1885.

Be it remembered that there was opened and begun, to be holden, a regular term of the United States circuit court for the fifth circuit and northern district of Texas, at the city of Dallas, in Dallas county and said circuit and district, on the 18th day of May, A. D. 1885, it being the third Monday in said month in said year, and the day fixed by law for commencing a regular term of said court at said place—present, Honorable Andrew P. McCormick, United States district judge for the northern district of Texas, presiding; J. C. Bigger, United States attorney for said district; J. A. McKee, United States marshal for said district, and A. J. Houston, clerk of said court—when and where the following proceedings were had, to wit:

Transcript of Record from the District Court of Montague County to U. S. Circuit Court, N. D. of Texas, at Dallas.

THE STATE OF TEXAS, *County of Montague:*

District Court. June Term & June 21, 1880.

Opening Order of the Court.

Be it remembered that on the 20th Monday after the 1st Monday in Feb'y, 1880, the same being the 21st day of June, 1880, there
2 was begun and holden a regular term of the hon. district court within and for Montague county, at the court-house thereof, in the town of Montague—present and presiding, Hon. J. A. Carroll, judge of the 10th judicial district of the State of Texas, and B. E. Green, county attorney of Montague county; R. E. Brown, clerk district court, and Levi Perryman, sheriff of Montague county—when and where the following proceedings were had, to wit:

Continuance.

District Court. June Term & June 25, 1880.

HUNTER, EVANS & CO.
vs.
JOHN A. ONEAL & JOHN DAWSON. } No. 538.

Continued to perfect service.

Original Petition. Filed May 31st, 1880. R. E. Brown, Dist. Clerk.

STATE OF TEXAS, *County of Montague:*

In the District —, Montague County.

To the hon. judge of said court:

The petition of R. D. Hunter, A. G. Evans, and M. P. Buil, partners doing business as such in the city of E. St. Louis, under the firm name and style of Hunter, Evans & Co., residents of the city of St. Louis, in the State of Missouri, against Jno. A. Oneal, who resides in Van Zandt county, in the State of Texas, & Jno.
3 Dawson, who resides in Tarrant county, Texas, respectfully shows:

That for a valuable consideration the said defendant, Jno. A. Oneal, did, on, to wit, Aug. 22, 1879, make, execute, and deliver unto your petitioners his two certain promissory notes, each for the sum of eleven thousand dollars, payable to the order of plaintiffs in their said firm name, at their office, with ten per centum interest after maturity per annum, due, respectively, at forty & sixty days from their date aforesaid; that said two notes were actually made on the 20 day of August, 1879, and on the date of their actual execution to secure payment of the same the said defendant, John A. Oneal, made and delivered to plaintiffs his certain bill of sale to all his interest, right, & title to his home stock of cattle, consisting of beeves, three-year-olds, two-year-olds, cows, bulls, yearlings, & calves, marked and branded as follows: Branded "O N" on hip and side & marked with swallow fork in each ear and various other marks; that contemporaneously with the execution of said bill of sale your petitioners made and delivered to the said defendant a defeasance in writing, to take effect upon the payment of the two promissory
4 notes hereinbefore described and another which has since been paid; that said original defeasance is now in the possession of said defendant, and he is hereby notified to produce the same upon the trial of this cause; that by said two instruments your petitioners were given a lien upon said stock of cattle to secure the payment of said two notes; that there is now due upon said two notes a balance of sixteen thousand nine hundred & nineteen $\frac{30}{100}$ dollars due and unpaid, which the said defendants on demand refuse to pay; that of the cattle so mortgaged as aforesaid three hundred & ninety-six (396) yearlings, four hundred & twenty-four (424) two-year-olds, two hundred & twenty (220) three-year-olds, one hundred & eighty-two (182) four-year-olds, two hundred & forty-six dry cows, & ten bulls, of the aggregate value of fifteen thousand six hundred & fourteen dollars, are now in the possession of the said defendant, John Dawson, in the county of Montague aforesaid; that your petitioners fear that the said defendant will make use of his possession to waste said property, and that he will remove the same out of the said county of Montague during the pending of this suit.

The premises considered, your petitioners pray for citation
5 for the issue of a writ of sequestration for judgment for the principal and interest due upon said two notes aforesaid, for a foreclosure of their mortgage aforesaid, for all costs and general relief.

WATTS & COWART,
EBLEN & ROBERTSON,
Attorneys for the Plaintiffs.

Affidavit of J. B. F. Sampel. Filed May 31, 1880. *R. E. Brown, Clerk Dist. Court.*

HUNTER, EVANS & Co.
vs.
JOHN A. ONEAL & JOHN DAWSON. } No. 538.

Suit pending in the district court of Montague county.

Before the undersigned authority this day personally appeared J. B. F. Sampel, who, being duly sworn, states under oath that he is an agent of Hunter, Evans & Co., plaintiffs in the above cause; that he fears and the plaintiffs fear that Jno. Dawson and Jno. A. Oneal, defendants in said cause, will waste and remove out of the county during the pending of said suit the property upon which the plaintiffs are seeking to foreclose their mortgage lien described as follows, to wit, fourteen hundred & seventy-eight head of cattle, more particularly described as follows: Three hundred & ninety-six (396) yearlings, of the value of seven dollars each; four hundred
6 & twenty-four (424) two-year-olds, of the value of nine $\frac{50}{100}$ dollars each; two hundred & twenty (220) three-year-olds, of the value of thirteen dollars —; one hundred & eighty-two (182) four-year-olds, of the value of eighteen dollars each; two hundred & forty-six (246) dry cows, of the value of ten $\frac{50}{100}$ dollars each; ten bulls, of the value — nine $\frac{50}{100}$ dollars each, all of the aggregate value of fifteen thousand six hundred & fourteen dollars and all road branded "[illegible]" on the side, and nearly all branded thus, "O N," now in one heard in the possession of the said John Dawson, in the county of Montague, Texas. Affiant further states that a lien does exist upon said property in favor of plaintiffs, and that said lien is just and unsatisfied, and that the amount of the sum still unsatisfied is sixteen thousand nine hundred & nineteen $\frac{30}{100}$ dollars, and became due at forty & sixty days after August 22nd, 1879.

Affiant further states that the averments contained in the original petition in said cause are true.

J. B. F. SAMPSEL.

Subscribed & sworn to before me this the 31st day of May, 1880.
[SEAL.] R. E. BROWN,
Clerk Dist. Court, Montague Co., Texas.

7 *Bond for Writ of Sequestration. Filed & Approved May 31st, 1880. R. E. Brown, Clerk Dist. Court.*

HUNTER, EVANS & Co. *vs.* JOHN A. ONEAL *et al.* } No. 538.

Suit in district court of Montague county.

Know all men by these presents that we, R. D. Hunter, A. G. Evans, and M. P. Buil (composing the firm of Hunter, Evans & Co.), as principal-, and C. C. Slaughter and J. B. F. Sampsel and Louis Evans and A. F. Hardie, as sureties, do hereby acknowledge ourselves bound to pay John A. Oneal and John Dawson the sum of thirty-one thousand two hundred and twenty-eight dollars, condition- that said R. D. Hunter, A. G. Evans, and M. P. Buil (composing said firm of Hunter, Evans & Co.), plaintiffs in the above-entitled suit, who *has* applied for a writ of sequestration in said suit, will pay to said John Oneal and John Dawson, defendants, all such damages as may be awarded against them, and all costs, in case it shall be decided that said sequestration was wrongfully issued.

Witness our hands this 31 day of May, A. D. 1880.

R. D. HUNTER,
A. G. EVANS,
M. P. BUEL,
Principals.
C. C. SLAUGHTER,
J. B. F. SAMPEL,
LOUIS W. EVANS,
A. F. HARDIE,
Sureties.

8 STATE OF TEXAS, *County of Dallas:*

I, W. A. Harwood, clerk of the district court of Dallas Co., Texas, do hereby certify that I believe the sureties upon the above bond amply sufficient for the penalty therein named and that if presented to me for approval I would approve the same.

Witness my hand & seal May 27, 1880.

[SEAL.] W. A. HARWOOD,
Cl'k D. C. D. Co., Tex.

Citation. Issued 31st Day of May, 1880. R. E. Brown, Clerk District Court.

The State of Texas to the sheriff or any constable of Montague county, Greeting:

You are hereby commanded to summon John Dawson to appear before the district court of Montague county, to be held at the court-house in the town of Montague on the 21st day of June, A. D. 1880, then and there to answer the petition of Hunter, Evans & Co. (to

wit, R. D. Hunter, A. G. Evans, and M. P. Buel), filed in said court on the 31st day of May, 1880, against the said John A. Oneal and John Dawson for suit, said suit being numbered 538, the nature of which is as follows, to wit: Suit on two promissory notes given by defendant, John A. Oneal, to Hunter, Evans & Co., both dated Aug. 22d, 1879, each for eleven thousand dollars, first due and
9 payable to the order of Hunter, Evans & Co. forty days after date, the other due and payable to the order of Hunter, Evans & Co. sixty days after date; also to foreclose a lien upon certain cattle given to secure said notes and for writ of sequestration to seize said cattle, which are alleged to be in the possession of said John Dawson, and you will deliver to the said John Dawson the accompanying certified copy of plaintiffs' original petition — a true copy of this citation.

Witness R. E. Brown, clerk of the district court of Montague county.

Given under my hand and seal of office, at Montague, this the 31st day of May, A. D. 1880.

[SEAL.] R. E. BROWN,
Clerk District Court, Montague Co., Texas.

Came to hand this the 31st day of May, 1880, at one o'clock p. m., and executed the 2nd day of June, 1880, by delivering to John Dawson in person, the within-named defendant, a true copy of this writ, together with a certified copy of plaintiffs' petition.

LEVI PERRYMAN,
Sheriff Montague Co., Texas.

Writ of Sequestration. Issued May 31st, 1880. R. E. Brown, Dist. Clerk.

The State of Texas to the sheriff or any constable of Montague county, Greeting:

You are hereby commanded that you take into possession,
10 if to be found in your county, the following-described property, to wit, fourteen hundred and seventy-eight head of cattle, more particularly described as follows: Three hundred and ninety-six yearlings, of the value of seven dollars each; four hundred and twenty-four two-year-olds, of the value of nine $\frac{50}{100}$ dollars each; two hundred and twenty three-year-olds, of the value of thirteen dollars each; one hundred and eighty-two four-year-olds, of the value of eighteen dollars each; two hundred and forty-six dry cows, of the value of ten & $\frac{50}{100}$ dollars each, and ten bulls, of the value of nine & $\frac{50}{100}$ dollars each, of the aggregate value of fifteen thousand six hundred and fourteen dollars, and all road branded " " on the side, and nearly all branded thus, O N, now in one herd, and hold the same subject to the future order of our district court in and for the county of Montague, in a certain cause therein pending wherein R. D. Hunter, A. G. Evans, and M. P. Buel, comprising the firm of Hunter, Evans & Co., are plaintiffs and John A.

Oneal and John Dawson are defendants, unless said defendants or persons from whose possession such property is taken shall replevy the same according to law. Herein fail not, but have you this
11 writ, with your return thereon showing you have executed the same, before our district court in and for the county of Montague, to be holden at the court-house thereof, in the town of Montague, on the 21st day of June, A. D. 1880.

Witness R. E. Brown, clerk of the district court, Montague county. Given under my hand and the seal of said court, at office, in the town of Montague, this the 31st day of May, A. D. 1880.

[SEAL.] R. E. BROWN,
Clerk Dist. Court, Montague County, Texas.

Came to hand May the 31st, 1880, at 1 o'clock p. m., and executed on the 2 day of June, A. D. 1880, by taking into possession the property described in this writ, found in the possession of John Dawson, to wit, fourteen hundred and seventy-eight head of cattle, more particularly described as follows: Three hundred and ninety-six yearlings, of the value of seven dollars each; four hundred and twenty-four two-year-olds, of the value of nine & $\frac{50}{100}$ dollars each; two hundred and twenty three-year-olds, of the value of thirteen dollars each; one hundred and eighty-two four-year-olds, of the value of eighteen dollars each; two hundred forty-six dry cows, of the value of ten & $\frac{50}{100}$ dollars each, and 10 bulls, of the value of ten & $\frac{50}{100}$ dollars each, all of the aggregate value of fifteen thousand six hundred and fourteen dollars and all road branded
12 "N" on the side, and nearly all branded thus, O N, now in one herd.

LEVI PERRYMAN,
Sheriff Montague County, Texas.

And afterwards, viz., on the 5 day of June, 1880, the defendant, John Dawson, filed with me a replevy bond and the above-described cattle were all turned back to him.

LEVI PERRYMAN,
Sheriff of Montague County, Texas,
By W. A. MORRIS, *Dep'ty.*

Citation. Issued 31st Day of May, 1880. *R. E. Brown, Clerk District Court.*

The State of Texas to the sheriff or any constable of Van Zandt county, Greeting:

You are hereby commanded to summon John A. Oneal to appear before the district court of Montague county, to be held at the court-house, in the town of Montague, on the 21st day of June, A. D. 1880, then and there to answer the petition of Hunter, Evans & Co. (to wit, R. D. Hunter, A. G. Evans, & M. P. Buel), filed in said court on the 31st day of May, 1880, against the said John A. Oneal and John Dawson for suit, said suit being numbered 538, the nature of which

demand is as follows, to wit: Suit on two promissory notes given by defendant, John A. Oneal, to Hunter, Evans & Co., both dated August 22nd, 1879, each for eleven thousand dollars, first
13 due and payable to order of Hunter, Evans & Co. forty days after date; the other due and payable to the order of Hunter, Evans & Co. sixty days after date; also to foreclose a lien upon certain cattle given to secure said notes and for writ of sequestration to seize said cattle, which are alledged to be in the possession of said John Dawson, and you will deliver to the said John A. Oneal the accompanying certified copy of plaintiffs' petition — a true copy of this citation. Herein fail not, but have you then and there this writ, showing how you have executed the same.

Witness R. E. Brown, clerk of the district court of Montague county.

Given under my hand and seal of office, at Montague, this the 31st day of May, A. D. 1880.

R. E. BROWN, [SEAL.]
Clerk District Court, Montague County, Texas.

Sheriff's Return.

Came to hand this the 7th day of June, 1880, at 8 o'clock a. m., and executed the 17th day of June, 1880, by delivering to John A. Oneal, the within-named defendant, a true copy of this writ, together with a certified copy of plaintiffs' accompanying original petition.

J. T. HAM,
Sheriff Van Zandt Co., Texas,
By W. W. McLEAN, *Deputy.*

Fees:

Serving copy	$1 50
Mileage	1 40
Postage	12
	$3 02

14 *Defendants' Replevy Bond. Approved June* 5, 1880. *Levi Perryman, Sheriff of Montague County, Texas, by W. A. Morris, Dep't. Filed June* 5, 1880. *R. E. Brown, Clerk Dist. Court.*

STATE OF TEXAS, *Montague County:*

HUNTER, EVANS & Co.
vs.
JOHN DAWSON & JOHN A. ONEAL. } No. 538.

Suit pending in district court of Montague county, Texas.

Whereas, by virtue of a writ of sequestration issued by R. E. Brown, clerk of the district court of Montague county, Texas, against John Dawson and John A. Oneal at the suit of R. D. Hunter, A. G.

Evans & M. P. Buel, partners doing business under the firm name & style of Hunter, Evans & Co., bearing date the 31st day of May, 1880, Levi Perryman, sheriff of Montague county, Texas, has seized and taken possession of the following described cattle, to wit, three hundred & ninety-six yearlings, four hundred & twenty-four two-year-olds, two hundred & twenty three-year-olds, one hundred & eighty-two four-year-olds, two hundred & forty-six dry cows, and ten bulls, of the aggregate value of fifteen thousand six hundred and fourteen dollars, described in said writ, and the said John Dawson desiring to retain said property, now,
15 therefore, we, John Dawson, as principal, and John Nichols & S. W. Lomax, as sureties, acknowledge ourselves bound to pay the said Hunter Evans & Co. thirty-five thousand dollars, conditioned that the said John Dawson will not remove said property out of the limits of county of Montague during the pending of said suit, or that he will not make use of his possession to waste said property, and that he will have such property with the value of the fruits, heirs, and revenues whereof forthcoming to abide the decision of the court, or that he will pay the value thereof and of the fruits, heirs, and revenues of the same in case he shall be condemned so to do.

Witness our hands the 2 day of June, 1880.

J. M. DAWSON.
JOHN NICHOLS.
F. W. LOMAX.
W. J. BOAZ.
J. F. ELLIS.
W. SCOTT.

To the sheriff of Montague county:

This is to certify that we are well acquainted with the above-named sureties to said replevy bond and that they are above all exemptions and indebtedness or worth the sum of thirty-four thousand dollars, & we would accept & approve said bond.

In testimony whereof I hereunto set my hand and official seal, in Fort Worth, on this 4th day of June, A. D. 1880.

[SEAL.] J. P. WOODS,
County Clerk Tarrant Co., Tex.

16 Mr. PERRYMAN: The men who have signed this bond are the richest men in our county, and no better bond could be made in the State of Texas.

J. M. HENDERSON,
Sheriff Tarrant County, Texas.

Affidavit for Supplemental Writ of Sequestration. Filed June 21, 1880.
R. E. Brown, Dist. Clerk.

HUNTER, EVANS & Co.
vs.
JOHN ONEAL and JOHN DAWSON. } No. 538.

Suit pending in the district court of Montague county.

Before the undersigned authority this day personally appeared J. B. F. Sampsel, who, being duly sworn, states under oath that he is an agent of the plaintiffs in the above-entitled cause; that the defendant in said cause, John Oneal, is indebted to the said plaintiffs in the sum of sixteen thousand nine hundred and nineteen $\frac{30}{100}$ dollars, which said sum became due at forty & sixty days after the 22 day of August, 1879; that to secure the payment of the said indebtedness the said John Oneal, on the 20 day of August, 1879, made and delivered to plaintiffs aforesaid a bill of sale of all his right, title, and interest in his home stock of cattle, consisting of beeves, three-year-olds, two-year-olds, cows, bulls, yearlings, and calves,
17 marked and branded as follows: branded O N on the hip and side and marked swallow fork in each ear and various other marks, and on the same day plaintiffs made and delivered to the said defendants their defeasance of said bill of sale, to take effect upon payment of the indebtedness aforesaid; that to secure said indebtedness the said plaintiffs have and hold upon said stock of cattle a lien, which is just and unsatisfied and in full force, to the amount of said indebtedness; that of said cattle, not including those already seized under writ of sequestration directed to the sheriff of Montague county, upon which the said plaintiffs have a lien as aforesaid, the following are in the possession of the defendant, John Oneal, not claimed by his codefendant, John Dawson, and now in Van Zandt county, Texas, to wit: Fifty beeves, of the value of eighteen dollars each; 100 beeves, of the value of fifteen dollars each; one hundred two-year-olds, of the value of eleven dollars each; one hundred cows, of the value of ten dollars each, and one hundred yearlings, of the value of seven $\frac{50}{100}$ dollars each, aggregating in value the sum of (5,250) five thousand two hundred and fifty dollars. The said affiant further states that he fears and said plaintiffs fear
18 that the said defendant, John Oneal, will remove the said above-described property out of the said county of Van Zandt during the pending of this said suit.

Wherefore the said plaintiffs pray for the issuance of a supplemental writ of sequestration in said cause to be directed to the sheriff of Van Zandt county, Texas, &c., &c.

J. B. F. SAMPSEL.

Subscribed & sworn to before me this 21 day of June, 1880.

R. E. BROWN,
Dist. Clerk.

Bond for Supplemental Writ of Sequestration. Filed and Approved June 21st, 1880. R. E. Brown, Clerk Dist. Court.

HUNTER, EVANS & Co.
vs.
JOHN A. ONEAL *et al.* } No. 538.

Suit in district court, Montague county, Texas.

Know all men by these presents that we, R. D. Hunter, A. G. Evans, & M. P. Buel, composing the firm of Hunter, Evans & Co., as principal-, and C. C. Slaughter and A. F. Hardie, as sureties, do hereby acknowledge ourselves bound to pay to John A. Oneal the sum of ten thousand five hundred dollars, condition- that the said Hunter, Evans & Co., plaintiffs in the above-entitled suit, who have applied for a supplemental writ of sequestration to be directed to the sheriff or any constable of Van Zandt county, Texas,
19 in said suit will pay to the said defendant, John A. Oneal, all such damages as may be awarded against them and all costs in case it should be decided that such sequestration was wrongfully issued.

Witness our hands this 24th day of June, 1880.

ROBERT D. HUNTER,
ALBERT G. EVANS,
MUNSON P. BUEL,
By J. B. F. SAMPSEL, *Agent.*
C. C. SLAUGHTER.
A. F. HARDIE.

Original Answer of Defendant, John Dawson. Filed June 24, 1880. R. E. Brown, Dist. Clerk.

HUNTER, EVANS & Co.
vs.
JOHN A. ONEAL & JOHN DAWSON. } No. 538.

Suit pending in district court of Montague county, Texas, June term, A. D. 1880.

Now comes the defendant, John Dawson, and denies each and every alligation contained in plaintiffs' petition, and calls for strict proof of the same and puts himself on the country.

JOHN DAWSON,
By his attorneys, STEPHENS & MATLOCK.

Affidavit of J. B. F. Sampsel. Filed June 22, 1881. *R. E. Brown, Dist. Clerk.*

In the District Court of Montague County.

HUNTER, EVANS & Co.
vs.
JNO. ONEAL & JNO. DAWSON. } No. 538.

20 Before me, the undersigned authority, this day personally appeared J. B. F. Sampsel, who, being duly sworn, states on oath that on Saturday, the 12 day of June, 1880, the defendant, Jno. Oneal, was at Will's Point, Van Zandt county, his place of residence, and there seen by affiant *of* the evening of said day; and affiant further states that he has reason to believe & does believe that said Oneal was in and about Will's Point from said Saturday until the night of Tuesday, the 15 day of June, 1880.

J. B. F. SAMPSEL.

Subscribed & sworn to before me this the 22 day of June, 1880.

R. E. BROWN,
Dist. Clerk Montague Co.

Replevy Bond. Filed Sept. 18*th*, 1880. *R. E. Brown, Cl'k Dist. Court.*

THE STATE OF TEXAS, *County of Montague:*

Know all men by these presents that I, Jno. A. Oneal, as principal, and —— ——, as sureties, are held and firmly bound unto R. D. Hunter, A. G. Evans, and M. P. Buel, constituting the firm of Hunter, Evans & Co., in the sum of two hundred and twenty dollars; for the payment of which, well and truly to be made, we hereby
21 bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents forever. Now, the condition of the above obligation are such that whereas J. T. Hamm, sheriff of Van Zandt county, Texas, did, on the 20 day of June, 1880, seize and levy upon the following-described cattle, the property of the said Jno. A. Oneal, to wit, eleven head of milk cows and calves, running around the premises of the said Jno. A. Oneal, all marked with swallow fork in each ear except three, which are marked as follows: one swallow fork and under slope in each each; one swallow fork and under bit in the right and under slope in the left; one cross and split in the right and under slope in the left; the first mentioned of these three branded X on right side, O N on hip and side; the second branded F C on hip and side and O N on hip and side; the third branded X on the left hip, O N on hip and side, the said property levied upon by virtue of a writ of sequestration issued out of the district court of Montague county in favor of the said Hunter, Evans & Co. and against the said John A. Dawson and directed and delivered to the said sheriff of Van Zandt

county, now, if the said Jno. A. Oneal shall not remove the said eleven head of cattle out of the said county of Van Zandt
22 and shall not waste, ill-treat, injure, destroy, sell, or dispose of the same, and that he will pay the value thereof and the fruits, heirs, or revenue of the same in case he shall be condemned so to do, then this obligation to be null & void; otherwise to remain in full force and effect.

In testimony of all of which we hereunto set our hands this the 15 day of July, 1880.

JNO. A. ONEAL.
W. G. CRISWELL.
T. J. BRIDGES.
F. C. WILLS.

Taken and approved July 17, 1880.

J. T. HAMM,
Sheriff Van Zandt County, Texas.

Supplemental Writ of Seques-tion. Issued June 21st, 1880. R. E. Brown, Dist. Clerk.

The State of Texas to the sheriff or any constable of Van Zandt county, Texas, Greeting:

You are hereby commanded that you take into possession, if to be found in your county, the following-described property, to wit: Fifty beeves, of the value of eighteen dollars each; one hundred beeves, of the value of fifteen dollars each; one hundred two-year-olds, of the value of eleven dollars each; one hundred cows, of the value of ten dollars each, and one hundred yearlings, of the value of seven and $\frac{50}{100}$ dollars each, aggregating in value the sum of five thousand two hundred & fifty dollars. Said above cattle are branded
23 O N on hip & side and marked with swallow fork in each ear and various other marks, and hold the same subject to the future order of our district court in and for the county of Montague in a certain cause therein pending, wherein R. D. Hunter, A. G. Evans, and M. P. Buel, comprising the firm of Hunter, Evans & Co., are plaintiffs and John A. Oneal and John Dawson are defendants, unless said defendants or persons from whose possession such property is taken shall replevy the same according to law. Herein fail not, but have you this writ, with your return thereon showing how you have executed the same, before our district court in and for the county of Montague, to be holden at the court-house thereof, in the town of Montague, on the 20th day of December, A. D. 1880.

Witness R. E. Brown, clerk of the district court of Montague county.

Given under my hand and the seal of said court, at office, in the town of Montague, this the 21 day of June, A. D. 1880.

[SEAL.] R. E. BROWN,
Cl'k Dist. Court, Montague County, Texas.

SHERIFF'S OFFICE, VAN ZANDT CO., TEXAS.

Came to hand the 26 day of June, 1880, & executed on the 28 day of June, 1880, by levying said writ of sequestration on
24 450 head of cattle running in the range of the "O N" brand. After making said levy then, at the instance of the plaintiffs, I proceeded to gather such of said cattle as could be found in the range, numbering two hundred & forty-seven (247) head, of the following description & value: 42 head steer, 4 years old & upward, valued — 18 dollars per head; 64 cows, at 10 dollars per head; 26 three-year-old-, at 15 dollars per head; 51 two-year-olds, at 11 dollars per head; 22 one-year-olds, $7.50 per head; 41 calves, all branded "O N," except 3 cows, on which said brand was inverted, making "N O." Said brand was on the hip of some, on the side of some, & some on the hips and side both. Some of said cattle had other brands besides the "O N" brand & marked with various marks. After gathering the said 247 head of cattle, being all that could be found in the range, the said writ of sequestration was relevied on the said 247 head of cattle then under heard in the presence of J. M. Ferguson & Jeff. Brages, the one general levy being made in the presence of J. M. & W. H. Pate. On the 17 July, 1880, the def't, Jno. A. Oneil, replevied 11 cows & 10 calves, valued at 110 dollars. By the concent of Sampsel, agent for pl'ffs, the said
25 def't executed a good & sufficient bond for the sum of 220 dollars. On the 20th day of July, 1880, the remainder of said cattle were replevied by the plaintiffs, & the said cattle delivered to their agent, Sampsel. The said replevy bonds are herewith returned. The expense of gathering, herding, & keeping said cattle, amounted to $279.02, was paid by the said plaintiffs, Hunter, Evans & Co.

Witness my hand July 20, 1880.

J. T. HAMM,
Sheriff Van Zandt County, Texas.

Precept. Issued Oct. 19th, 1880. *R. E. Brown, Cl'k.*

THE STATE OF TEXAS, *Montague County:*

To the sheriff or any constable of Tarrant county, Greeting:

Whereas in the case of Hunter, Evans & Co. *vs.* John A. Oneal & John Dawson, No. 538, a suit pending in the district court of Montague county, Texas, the pl'ffs, Hunter, Evans & Co., have filed in my office certain interrogatories to take the depositions of J. B. F. Sampsel, F. W. Flato, Jr., Lewis Evans, M. P. Buel, A. G. Evans, & R. D. Hunter, witnesses who reside in the county of St. Louis and State of Missouri: Now, therefore, you are hereby commanded to serve John Dawson or Messrs. Ball & McCart, att'ys of record,
26 by handing them the accompanying certified copy of interrogatories and notice filed in the above-entitled cause. Herein fail not, but of this precept make due return within five days after service aforesaid.

Test R. E. Brown, clerk of the district court of Montague county, and seal of same, at my office, in Montague, this 19th day of October, A. D. 1880.

R. E. BROWN, *Clk.*

Came to hand Oct. 23, 1880, and executed Oct. 25, 1880, by delivering to Robert McCart, one of the att'ys of record of John Dawson, in person a true copy of this writ, with the accompanying certified copy of interrogatories.

J. M. HENDERSON,
Sheriff T. C., T.,
By G. W. WIAS, *Dep'ty.*

Fees, $1.00.

Precept. Issued Oct. 19th, 1880. *R. E. Brown, Clk.*

THE STATE OF TEXAS, *Montague County:*

To the sheriff or any constable of Van Zandt county, Greeting:

Whereas in the case of Hunter, Evans & Co. *vs.* John A. Oneal & John Dawson, No. 538, a suit pending in the district court of Montague county, Texas, the pl'ff-, Hunter, Evans & Co., have filed in my office certain interrogatories to take the depositions of J. B. F. Sampsel, F. W. Flato, Jr., Lewis Evans, M. P. Buel, A. G. Evans, & R. D. Hunter, witnesses who reside in the county of St.
27 Louis and State of Missouri: Now, therefore, you are hereby commanded to serve John A. Oneal by handing him the accompanying certified copy of interrogatories and notice filed in the above-entitled cause. Herein fail not, but of this precept make due return within five days after service as aforesaid.

Test R. E. Brown, clerk of the district court of Montague county, and seal of same, at my office, in Montague, this 19th day of Oct., A. D. 1880.

R. E. BROWN, *Clerk.*

Came to hand Oct. the 27th, 1880; executed November 2d by delivering a true copy of the within precept to John A. Oneal this November the 4th, 1880.

J. T. HAMM,
Sheriff Van Zandt County, Tex.

Replevy Bond. Filed Sept. 18, 1880. *R. E. Brown, Clerk Dist. Court.*

In District Court of Montague County.

HUNTER, EVANS & CO. *vs.* JOHN ONEAL & JOHN DAWSON.

Whereas, by virtue of a writ of sequestration issued out of the district court of Montague county, Texas, at the suit of Hunter, Evans & Co. *vs.* John Oneal and John Dawson, and bearing date the

— day of June, A. D. 1880, J. T. Ham, sheriff of the county
28 of Van Zandt, has seized and taken the following property into his possession, viz: 40 4-year-old beeves, valued at $18.00 each; 28 3-y'rs-old beeves, valued at $15.00 each; 52 2-y'r-old beeves, valued at $11.00 each; 41 cows and calves, valued at $10.00 each; 16 bar-en cows, valued at $10.00 each; 19 yearlings, valued at $7.50 each, all branded O N on hip and side, and which have, by the sheriff, been valued in the aggregate at twenty-four hundred and twenty-four $\frac{56}{100}$ dollars; and whereas the said John Oneal and John Dawson, the defendants, have failed to replevy the same within the time prescribed by law, said property has been delivered to Robert D. Hunter, Albert G. Evans, and Menson P. Buel, composing the firm of Hunter, Evans & Co., plaintiffs in said cause, by the said R. Ham, sheriff as aforesaid: Now, therefore, we, Hunter, Evans & Co., as principals, and —— —— and —— ——, as sureties, acknowledge ourselves bound to pay to the said John Oneal the said sum of five thousand dollars, condition- that the said Hunter, Evans & Co. will have forthcoming such property, together with the fruits, hire, revenue, and rents of the same to abide the decision of the court.

29 Witness our hands this 13 day of July, A. D. 1880.

ROB'T D. HUNTER,
ALBERT G. EVANS,
MENSON. P. BUEL,
Per J. B. F. SAMPSEL, *Ag't.*
W. HUNTER.
JOSEPH H. BROWN.
W. F. LAKE.

THE STATE OF TEXAS, *County of Montague:*

I, J. M. Hartzfield, clerk of the district court within and for the county of Tarrant, do hereby certify *that* the above and foregoing bond to be good & sufficient for the amount therein specified, and that if the same was presented to me for approval for double the amount I would approve the same.

Given under my hand and the seal of said court, affixed at office, in the city of Fort Worth, this the 13th day of July, A. D. 1880.

J. M. HARTSFIELD, [SEAL.]
Cl'k Dist. Court, T. C., T.

Taken & approved July the 20th, 1880.

J. T. HAMM,
Sheriff Van Zandt County, Texas.

Opening Order of Court.

THE STATE OF TEXAS, *County of Montague:*

District Court. Dec'r Term & Dec'r 20th, 1880.

Be it remembered that on the 20th Monday after the 1st Monday in August, 1880, the same being the 20th day of December, 1880, there was begun and holden a regular term of the hon. dist.
30 court within and for Montague county, at the court-house thereof, in the town of Montague—present and presiding, Hon. J. A. Carroll, judge of the 10th judicial district of the State of Texas, and W. S. Jameson, county attorney; R. E. Brown, clerk of the district court, and G. W. Campbell, sheriff of Montague county—when and where the following proceedings were had, to wit:

Judgment.

District Court. Dec'r Term & Dec'r 28th, 1880.

HUNTER, EVANS & Co.
vs.
JOHN A. ONEAL & JOHN DAWSON. } No. 538.

In the district court of Montague county on this day came on to be heard the petition of plaintiffs for the removal of said cause to the circuit court of the United States for the northern district —, at Dallas, and, it appearing to the court that said application is in due form and the surety required by law tendered, it is considered by the court and so ordered and adjudged that said surety be accepted and that the said application be granted, and the clerk of this court is hereby ordered to make a full and correct transcript of the entire record and file in said cause and deliver the same to the plaintiffs herein, to be filed in the circuit court of the United States
31 for the northern district of Texas, at Dallas, to which the said cause is hereby removed; to which order defendant excepted.

Defendant's Original Answer. Filed Dec'r 28, 1880. *R. E. Brown, Clerk Dist. Court.*

In District Court, Montague County.

HUNTER, EVANS & Co. *vs.* JNO. A. ONEAL *et al.*

TEXAS, *Jan'y* 7, 1880.

Now comes the def't, Jno. A. Oneal, by his attorney, and, demurring to the petition of plaintiffs herein filed, says the same is insufficient in law to require of this defendant further answer, and of this he prays the judgment of the court and for costs.

J. C. KEARBY AND
R. H. ALLEN,
Att'ys for Def't, J. A. Oneal.

And for answer herein defendant Oneal denies all and singular the allegations in plaintiffs' — made and calls for strict proof of the same. The said def't, further answering, says that if he ever executed the promissory notes in pl'ffs' petition mentioned that the same were with the full understanding of the said def't and the plaintiffs that said notes should not represent the true indebtedness of the said def't to the said pl'ffs. The def't further says that at the time said promissory notes are alleged to have been made, executed,
32 and delivered by this def't to the said pl'ffs the indebtedness, if any there was due from this def't to said plaintiffs, was wholly una-certained and unbalanced; that the same has never been settled as between these said parties. The said defendant, further answering in this behalf, says that if ever any notes were executed by this def't to the plaintiffs, as in their petition is alleged, that the same were so executed for the purpose of securing a margin of credit from the said plaintiffs to this def't; that there was no consideration passed from the said plaintiffs to this def't for the execution of said notes; and def't, further answering, says that at the time of the execution of said notes and long prior thereto the plaintiffs herein were engaged as commission merchants for the sale of stock in the city of East St. Louis and State of Illinois; that as said commission merchants they received from this def't large numbers of cattle during the year 1879, to wit, about ten thousand head; that said cattle were shipped by this def't to the said plaintiffs, as said commission merchants, for the purpose of being sold by them, the said pl'ffs, in due course of trade. As said commission merchants, the said plaintiffs, on, to wit, the 11 day of Sept., 1879, received from the Iron Mountain Railway
33 Company, in the said city of East St. Louis, by regular shipment, for the account of this def't, a large number of cattle, to wit, 122 head, which said cattle were then and there converted and appropriated by the said plaintiffs to their own use and benefit, and that the same were never accounted for by this said pl'ffs to this def't; that said cattle were the property of this def't and were of the reasonable value of $31.20 per head, amounting, in the aggregate, to the sum of two thousand eight hundred and sixty and $\frac{40}{100}$ dollars; that — the said amount nor any part thereof have ever been paid to this def't nor has he ever received any credit for the same or any part thereof, and the said def't here pleads the said amount in offset to the claim of pl'ffs; that the said plaintiffs, as a part of the pretended consideration of the promissory notes aforesaid, have charged to the account of this defendant the sum of ($665.99) six hundred and sixty-five and $\frac{99}{100}$ dollars as pretended lossage on cattle shipped, to wit, on the 26th day of Dec'r, 1879; that said items of lossage is wholly false and incorrect; that this def't never in any way authorized or requested the shipment of said cattle to the East for
34 the purpose of being marketed or for any other purpose; that if said cattle were so shipped to the East by them, said plaintiffs, that the same was done without the knowledge or consent of this def't, and that said lossage is in no way charg-able to him, and he here pleads said amount in offset to the said claim of pl'ffs.

Def't, further answering, says that as a part of the pretended consideration of the promissory notes aforesaid, and for which plaintiffs are seeking to foreclose their pretended lien, the said plaintiffs have charged this def't with the following items of interest, to wit: On the 30th day of Sept., 1879, the sum of $50.46; on the 24 day of Oct., 1879, the sum of $196.08; on the 25 day of Nov., 1879, the sum of $278.41; on the 31st day of Dec., 1879, the sum of $192.25; on the 31st day of Jan'y, 1880, the sum of $158.96; on the 1st day of Dec., 1880, the sum of $1,288.93; making a total, $2,164.69; which said items are here specifically denied. Def't avers that each and every of said items of interest are wholly unjust and incorrect; that he never agreed or promised to pay any interest whatever to these plaintiffs on accounts outstanding between this def't and these plaintiffs, and by him pleads said amount in offset to the said pretended claim of plaintiffs. Defendant further avers that the following items charged by plaintiffs against this def't as
35 a part of the pretended consideration of the promissory notes aforesaid are wholly untrue, incorrect, and unjust, same being a part and parcel of the indebtedness claimed by plaintiffs, and for which they seek to foreclose their pretended mortgage lien, to wit, the sum of ($2,500.00) twenty-five hundred dollars, charged as draft drawn by W. Hunter on said plaintiffs the 24 day of June, 1879; also the sum of eighteen thousand eight hundred and ninety-eight and $\frac{25}{100}$ dollars, charged in the said account of the plaintiffs against this defendant as drafts drawn by W. Hunter on the said pl'ffs on the 8 day of Aug., 1879, and pretended to have been paid by said plaintiffs; also another item of six hundred and fifty-two and $\frac{52}{100}$ dollars, charged against this def't or drafts drawn on said plaintiffs by W. Hunter on the 5th day of Dec., 1879, and the said draft pretended to have been paid by the said plaintiffs for the account of this def't. Def't further alleges and so charges that he did not authorize nor empower the said W. Hunter to draw said drafts nor any of them for his account or for the account of any one else, nor did he in any way ratify or confirm the drafts so drawn nor authorize the payment of the same by the said plaintiffs or
36 any person whatsoever. Def't avers that at and during the time the said drafts are charged to have been drawn and paid the said W. Hunter was the agent of the said plaintiffs at Fort Worth, Texas, and transacted for and in their behalf all business carried on for them in that portion of the country, and def't further charges that said drafts were drawn and paid by the said W. Hunter and the said pl'ffs without the knowledge or consent of him, the said defendant, and that def't has never in any manner ratified or confirmed the drawing or the payment of the same or any part thereof, and def't here pleads the amounts of said drafts as aforesaid in offset to the said claim of pl'ffs. Def't further charges and avers that as a part and parcel of the pretended consideration of the promissory notes aforesaid and of the indebtedness claimed by plaintiffs against this defendant the said pl'ffs have charged this def't with the sum of one hundred and eleven and $\frac{50}{100}$ dollars of date July 8th, 1879. Def't avers that the sum of one hundred dollars of said amount

is wholly incorrect and unjust and improperly charged against this def't; that said amount is charged as balance of account & from Oneal to Dawson, and that the amount of the same is properly eleven and $\frac{50}{100}$ dollars, and the said def't here
37 pleads the said one hundred dollars in offset of the pl'ffs' said claim. Def't further says that, as a part of the claim of pl'ffs against def't is the sum of one hundred & two & $\frac{50}{100}$ dollars claimed to have been paid by pl'ffs to shippers & charged to the account of def't, commencing with May the 5th, 1879, & closing on December 3d, 1879, as shown by statement attached to the int'y & depositions of pl'ffs filed herein, def't says that pl'ffs were not authorized to make said payments for his account or any one of them, but def't says that he paid each of said shippers the amount of their said charge without any knowledge of such payment; that this def't never authorized said shippers to draw money from said pl'ffs for said amount or any part thereof, which amount def't here pleads as a credit upon whatever demand pl'ffs may establish against him. Def't further avers that he is charged as an item composing his indebtedness & for which pl'ffs seek to foreclose their lien, as shown per said statement, *is* dr'ft by W. Hunter, due Aug. 28th, 1879, bills payable act*pt.*, $6{,}724\frac{41}{100}$. Def't says that said Hunter was never authorized by him to draw said draft, nor these pl'ffs author-
38 ized to pay said draft, nor has this def't ever in any manner ratified said payment or the drawing of said draft, which amount def't here pleads in offset. Def't says that he is entitled to a credit of four hundred dollars, paid to John G. Moore for four months' service, commencing May the 1st, 1879, and extending up to the last day of August; one-half of said amount said pl'ffs agreed & undertook to pay *one-half thereof;* that this def't, at the special instance & request of said pl'ffs, paid said amount, & here pleads in offset & discount of any demand pl'ffs may establish against him one-half of said four hundred dollars, to wit, the sum of two hundred dollars. Def't further says that on the 22d day of May, 1880, he paid & delivered to the said pl'ffs the sum of nine thousand three hundred & seventeen dollars, by delivering — to their agent at Will's Point, for which these pl'ffs took the notes of John Dawson, & by their agent, Lewis Evans, & their att'y, A. Y. Watts, was received & entered as a credit upon the indebtedness of this def't to said pl'ffs, which amount he here pleads in offset & discount.

Def't, further answering in this behalf, says that the said pl'ffs ought not to have and maintain their said action in manner
39 and form as laid in their said petition, because he says that on, to wit, the 22d day of May, 1880, this def't sold and delivered to John M. Dawson, with the full knowledge and consent of the said pl'ffs, 1,748 head of cattle, for the purpose of liquidating and settling off the said claim of plaintiffs; that a large portion of said cattle were those mentioned in the said petition, and upon which said mortgage is alledged to have been given; that it was fully agreed and understood by and between the said def't and the said pl'ffs that said def't should sell and deliver to the said John M. Dawson said cattle, and that the proceeds of said cattle should be

prorated between the pl'ffs and the City National Bank of Fort Worth, Texas, according to their respective debts against def't, as admitted by him; that, in accordance with said terms of sale, the said John M. Dawson took full control and possession of said cattle, and the same, by agreement of the said pl'ffs and the said national bank, were to be disposed of by the said Dawson and the proceeds of the same turned over to some man to be nominated and choses for the said pl'ffs and the said banks, in accordance with said agreement and in proportion to their respective debts. Def't further avers and charges that said cattle were so delivered to the said Dawson, and that Henry E. McCullough was chosen by the said bank and the said plaintiffs to accompany the said Dawson and receive the proceeds of said cattle; that at the time of said sale the proceeds of the same, to wit, the sum of nineteen thousand and thirty-three dollars ($19,033.00) was credited on the notes held by plaintiffs against this def't and a receipt given by the said City National Bank; that the amount so credited on the said notes was $9,317.22 and the amount receipted for by the said City National Bank was $9,715.78; that, after said cattle have been so delivered to said Dawson as aforesaid, on, to wit, the said 22d day of May, 1880, and before the said cattle have been driven from Van Zandt county, where the same were then situated, the said Jno. M. Dawson sold, to wit, 263 head of said cattle, for the sum of $3,419.00, which said sum was by the said Dawson, in accordance with the stipulations of the aforesaid agreement, paid over to the said McCullough (who was then and there the mutual agent of the said pl'ffs and the said City National Bank), and by the said McCullough duly paid over to the said pl'ffs and the said City National Bank, in proportion to their respective claims aforesaid, to wit, to the said pl'ffs $1,668.50 and to the said City National Bank the sum of $1,750.50, the said payments being duly credited by the said McCullough on the notes aforesaid & for the amounts aforesaid, all of which said acts of the said Dawson and the said McCullough then and there done were duly ratified and confirmed by the said pl'ffs. Def't avers that pl'ffs received their portion of the proceeds of said sale and appropriated the same to their own use and benefit; and, for further answer, def't says that on, to wit, the 26th day of May, 1880, the said Jno. M. Dawson sold certain other cattle out of said herd, to wit, 100 beeves and 4 cows, for the sum of $2,060.00, out of which said sum he, the said Dawson, in accordance with the agreement aforesaid, paid to said McCullough, as mutual agent of the parties as aforesaid, the sum of $1,842.00, and the said McCullough thereupon transmitted to the said pl'ffs at St. Louis a draft for the said sum of $1,842.00, the amount so paid over to him, the said McCullough; that said amount was duly credited on the notes aforesaid in accordance with said agreement, all of which said acts of the said Dawson and the said McCullough were duly ratified and confirmed by the said pl'ffs; whereupon def't says that the said pl'ffs are estopped from denying and cancelling said sale and setting up their said pretended mortgage lien and asking its enforcement as against this def't upon the cattle in the possession

of the said Dawson and their said agent, McCullough; and of this he prays the judgment of the court and for costs of suit. Def't further charges and avers that after the execution of the promissory notes by this def't upon which the said plaintiffs predicated their pretended claims that this def't shipped to the said pl'ffs a large number of cattle, to wit, 7,868 head, of the reasonable value of $30.00 per head, aggregating the total sum of $23,644.00, that then pl'ffs have failed and refuses to credit said notes with the proceeds of said cattle or to account to this def't therefor; that the said cattle were received by the said pl'ffs and appropriated by them; wherefore def't prays that before the said pl'ffs are permitted to recover judgment for any sum of money against this def't that they be required to account for the proceeds of said cattle, and, upon their failing so to do, that this def't have
43 judgment against them, the said pl'ffs, for the full value of said cattle. Def't further avers and charges that, after the time of the execution of the promissory notes, as alleged in pl'ffs' petition, the said def't shipped and delivered cattle to the said plaintiffs as heretofore mentioned; that said cattle were so shipped and delivered to the said pl'ffs by the def't for the purpose and with the understanding that the same *was* to be sold by the said pl'ffs, as commission merchants, in the due course of trade and for the highest market price; that said plaintiffs, without the knowledge or consent of this def't, and wholly disregarding the rights of this def't, and with the intent and purpose of cheating, defrauding, and swindling this def't, sold a large number of def't's cattle, to wit, about three thousand head, to the Beef Canning Company of St. Louis, in which said company the said pl'ffs owned large interest, to ⅔ of the stock of said company; that said cattle were sold to said company for less than their real value and for less than they could have been sold for in the St. Louis market; that by said acts the said pl'ffs have perpetrated a fraud upon this def't, to his great injury,
44 to wit, five thousand dollars, and for which he prays judgment. Def't prays for judgment for the several sums in this answer set up, & specifically pleads *and* for an abatement of the claims of pl'ffs for so much as the several matters of set-offs aggregate and for general and special relief; and in duty bound will ever pray.

J. C. KEARBY &
R. H. ALLEN,
Att'ys for Oneal.

Defendant's, Oneal's, Demurrer to Jurisdiction. Filed Dec'r 28th, 1880.
R. E. Brown, Clerk Dist. Court.

HUNTER, EVANS & Co.
vs.
JOHN A. ONEAL *et al.*
} No. 538.

Now comes the defendant, John A. Oneal, herein and demurs to plaintiffs' petition herein, and says that said petition shows on its face that this court has no jurisdiction of the cause of action therein

set forth, for that the same shows that neither this defendant nor his codefendant Dawson reside in the county of Montague, and the same fails to show that the property upon which pl'ffs seek to enforce their lien or any portion thereof is situated in said county of Montague, and said petition further fails to show that the object of said suit is to foreclose a mortgage or other lien upon said
45 property; therefore this def't prays that he be dismissed.

J. C. KEARBY,
R. H. ALLEN,
Att'ys for Def't Oneal.

In District Court, Montague County, Texas.

HUNTER, EVANS & CO. *vs.* JOHN A. ONEAL & JOHN DAWSON.

Now, at this time, comes the def't, John A. Oneal, &, pleading in abatement to the jurisdiction of this court, says that at the time of the filing of this suit, for a long time prior thereto, & ever since the filing of the same this def't was & is a resident & citizen of the county of Van Zandt & State of Texas. Def't says that he is not now nor was he ever at any time a citizen of the county of Montague; that the said John Dawson at the time of the institution of this suit, long prior thereto, & ever since the filing of the same is & was a citizen of Tarrant county, Texas.

Def't further says that he never at any time promised or agreed or undertook, in writing or otherwise, to perform, pay, or discharge any debt or obligation to said plaintiffs in the said county of Montague. Def't says that if he ever promised or became liable to suit by pl'ffs for any amount that he undertook to discharge, pay, or perform the same in the county of Van Zandt, Texas, or at the
46 office of pl'ffs, in East St. Louis, Illinois, that the district court of Van Zandt county or the courts of East St. Louis, Illinois, place of the office of pl'ffs, have jurisdiction of the subject-matter of this suit, so far as this def't is concerned.

Def't further says neither the cattle upon which pl'ffs pretend to have & ask for the enforcement of lien upon nor any part of said cattle were at the time of the institution of this suit nor prior thereto situated in the said county of Montague, but the same was en route & in transit for market with the consent of said pl'ffs; that said cattle nor any part thereof were never at any time situated in Montague county, either before or at the time of the bringing of this suit. Def't says that said cattle were being driven through said Montague county with consent of pl'ffs & under the permission of pl'ffs' duly authorized agent, H. E. McCullough, who was present with said cattle as the agent or representative of pl'ffs & the city National Bank of Fort Worth.

Def't further says that he has not nor did he have at the institution of this suit any interest in or right to the said cattle levied on in said county of Montague or any portion thereof, & he here disclaims any right or interest in said

cattle; but def't says that long before the institution of
47 this suit & before said cattle were levied upon & before they were removed from Van Zandt county, the place where they were situated, the def't, with the consent of these pl'ffs, sold & delivered said cattle to the said John Dawson & received payment in full therefor, so far as def't was concerned, & that def't then & there delivered to the authorized agent of said pl'ffs the full amount of the proceeds of said sale, which was then and there accepted by said agent & afterwards accepted by these pl'ffs; wherefore def't says that he had no interest in the said cattle levied upon in said Montague county in the possession of said John Dawson by the sheriff of Montague county, as shown by his return on said writ.

JNO. A. ONEAL.

THE STATE OF TEXAS, *Montague Co.:*

Personally appeared before me, the undersigned authority, John Oneal, who, after being duly sworn, says the matters & things set forth in the foregoing plea *is* true in fact & substance.

—— ——.

Sworn to & subscribed before me this 28th day of December, 1880.
[SEAL.] R. E. BROWN,
Clerk Dist. Court

Def't Dawson's Amended Original Answer. Filed Dec'r 24th, 1880.
R. E. Brown, Clerk Dist. Court.

48 HUNTER, EVANS & Co. }
vs. } No. 538.
JOHN A. ONEAL. }

Suit pending in the district court of Montague county.

Now, at this time, comes the defendant, J. M. Dawson, and *beg* leave of the court amends his original answer filed herein, and says:

1st. This defendant demurs to the plaintiffs' petition herein, and says that the cause is wholly insufficient in law and shows no cause of action against this defendant.

2nd. This defendant denies all and singular the allegations in plaintiffs' petition contained, and calls for strict proof of same.

3rd. This defendant says he is not guilty of the wrongs, tresspasses, &c., laid to his charge by pl'ffs in *his* said petition- or any of them, and of this he puts himself on the country.

BALL & McCART,
Att'ys for s'd Def't.

4th. This defendant, further answering, says that it is not true that plaintiffs have a lien on the cattle described in their said petition as being in the county of Montague in the possession of this def't by virtue of the instrument of writing described therein or on

any part of said cattle, for def't avers that on, to wit, the 22nd day of May, 1880, at and near the town of Will's Point, in the county of Van Zandt, in the State of Texas, this defendant did, for a
49 valuable consideration by him, this def't, paid, purchased said cattle from his codef't, John A. Oneal, and the said Oneal then and there delivered said cattle to this defendant; that at the time of said purchase and delivery of said cattle from said Oneal said Oneal had the actual possession of said cattle and the full, legal title thereto, and at the time of said delivery executed and delivered to this def't a bill of sale to the same, duly authenticated and recorded as required by law, and that at the time of said purchase and delivery of said cattle this defendant had no notice, either actual or constructive, of the existence of the instrument of writing by virtue of which plaintiffs now assert a lien upon the said cattle.

BALL & McCART,
Att'ys for all Def't.

5th. Further answering herein, this defendant says that he is the sole, legal, and equitable owner of said cattle, and that plaintiffs have no lien upon or right to the cattle described in plaintiffs' petition as being in Montague county in the possession of this def't by reason of the pretended instrument of writing or mortgage described in plaintiffs' petition, for that this defendant pur-
50 chased said cattle from said Oneal as aforesaid, and pl'ffs' said pretended lien or mortgage thereon is and was absolutely null and void in this, that, firstly, the instrument of defeasance set up and described in pl'ffs' petition was made secretly, and the same was in no manner authenticated or recorded as required by law; secondly, the execution of said instrument was neither accompanied by an immediate delivery or any delivery at any time of said cattle from said Oneal to pl'ff-, followed by an actual and continued change of possession of said cattle; nor *was* said instruments or either of them or true copy of them deposited with and filed in the office of the county clerk of the county of Van Zandt, of which said county said Oneal was a resident at the time of the pretended execution thereof, and, thirdly, said instruments nor either of them were in any way authenticated for record or recorded as required by law; wherefore this def't says that the said pretended lien of pl'ffs on his said cattle purchased by him as aforesaid should not be enforced.

BALL & McCART,
Att'ys for s'd Def't.

6th. Further answering herein, this def't says that of the cattle purchased by him from his codef't Oneal as aforesaid and
51 seized under the writ of sequestration issued herein in the county of Montague only, to wit, the number of four hundred head were branded in the O N brand and mark described in pl'ffs' petition, and belonged to the O N or home stock of cattle of said Oneal attempted to be conveyed to pl'ffs by the instrument of writing set up in their said petition, and that the remainder of said

cattle (to wit, 134 head) were never in any manner conveyed or attempted to be conveyed to pl'ffs by said Oneal.

BALL & McCART,
Att'ys for s'd Def't.

7th. Further answering herein, this defendant says that he purchased said cattle from his codef't Oneal, as hereinbefore set forth, subject to all legal or valid liens which pl'ffs might have thereon, but that pl'ffs' said pretended lien is neither a legal or valid lien on said cattle for the reasons hereinbefore stated.

BALL & McCART, *Att'ys.*

8th. Further answering herein, this def't says that the plaintiffs ought not to be admitted to say that they have any kind of a lien or claim upon said cattle, or that, by reason of the matters stated in their said petition, they have a lien upon said cattle or any part thereof, because this defendant avers that at and before the
52 time this def't purchased said cattle from his codef't Oneal as aforesaid, and at and before the time of the delivery of said cattle to him by said Oneal as aforesaid, the pl'ffs were then and there present and did then and there declare to this defendant that they, pl'ffs, did waive all claims and lien that they, pl'ffs, had to or on said cattle by reason of the instrument of writing set up and sued on in their petition, and then and there waived all their right to and all their lien upon said cattle by virtue of said instrument of writing, and they then and there consented to the delivery of said cattle to this def't by said Oneal as aforesaid, and then and there agreed to take no proceedings to enforce said lien, and then and there abandoned and declared that they had abandoned their said lien, and then and there consented that this defendant might take possession of said cattle and drive the same to the Indian nation to market, and then and there consented that this def't might take and drive said cattle from said county of Van Zandt to said county of Montague; wherefore this def't purchased and received said cattle from said Oneal as aforesaid, and, at great expense, to wit, the sum of $1,000.00, hired hands to assist in
53 driving said cattle, and with great labor and trouble to himself of the further value of $1,000.00 had driven said cattle into said the county of Montague, being then and there on the road to market in the Indian Nation with said cattle when the pl'ffs brought *his* action herein, all of his actions in purchasing, receiving, and driving said cattle being included by the said acts and declarations of plaintiffs as aforesaid made to him and in his presence at and before the time of his said purchase from said Oneal as aforesaid, and at and before he had proceeded to drive said cattle to market as aforesaid, and at and before he had left the county of Van Zandt as aforesaid with said cattle; and def't avers that, relying upon the good faith of plaintiffs, he incurred the trouble, labor, and expense as aforesaid, and drove said cattle from said Van Zandt to said Montague county as aforesaid, and purchased and received said cattle from said Oneal aforesaid. Wherefore he prays judgment

if the pl'ffs ought to be admitted, against their own acts and declarations done and made as aforesaid, to set up and say they have a lien upon said cattle by reason of the instrument of writing set up and sued on in their said petition.

54 BALL & McCART,
Att'ys for s'd Def't.

9th. Further answering herein, this def't avers that at the time of his said purchase of said cattle from his codef't Oneal as aforesaid the plaintiffs, in addition to the acts and declarations by them done and made to and in the presence of this def't as aforesaid, made, executed, and delivered to said Oneal their, pl'ffs', receipt for the sum of, to wit, $9,317.22, which pl'ffs then and there declared, and by their action gave this defendant to understand, was to be considered as a written release from said pl'ffs of all their claim to and lien upon said cattle by virtue of the instrument of writing set up and declared on in their petition; and the def't avers that, relying upon the good faith of pl'ffs in executing and delivering said receipt to said Oneal, he purchased, received, and paid for said cattle and incurred the trouble, labor, and expense in recovering and driving said cattle as aforesaid. Wherefore he prays judgment if said plaintiffs ought, against their own written receipt and release, be heard to say that the defendant Oneal still owes them the sum of money claimed by them in their petition, and that they have a lien upon said cattle to secure the same.

BALL & McCART,
Att'ys for s'd Def't.

55 10th. Further answering herein, this def't avers that at the time of this def't's said purchase from said Oneal of said cattle the plaintiffs were present, and then and there contracted and agreed to and with this def't and said Oneal that if the defendant would pay to them the sum of $9,317.22 that they, pl'ffs, would receipt — the said Oneal for said sum, and would give him credit therefor on their notes against him, said Oneal, and would release all their claim to or lien upon said cattle so sold and delivered to the defendant by reason of the instrument of writing set out and sued on in their petition.

Wherefore this defendant paid and caused to be paid to them, pl'ffs, said sum of $9,317.22, and pl'ffs, in pursuance of their said contract, executed and delivered said receipt as aforesaid and released their lien upon said cattle aforesaid.

BALL & McCART,
Att'ys for s'd Def't.

11th. Further answering herein, this def't avers that before and at the time of his said purchase of said cattle from said Oneal as aforesaid the pl'ffs, being then and there present, contracted and agreed with this defendant and said Oneal that this defendant should execute and deliver to them, pl'ffs, and to the City National

Bank of Fort Worth his certain negotiable promissory note
56 for the sum of $19,033.00, and that in consideration thereof pl'ffs would release all their claim to and lien upon said cattle which they might have by virtue of the instrument of writing set up and sued upon in their petition; wherefore this defendant did then and there execute and deliver to said pl'ffs and to said City National Bank of Fort Worth his certain negotiable promissory note for said amount, which was received and accepted by pl'ffs in full discharge and satisfaction of their said lien.

BALL & McCART,
Att'ys for s'd Def't.

12. Further answering, this def't avers that he purchased said cattle from said Oneal, as aforesaid, by and with the consent of pl'ffs, as aforesaid, and executed his negotiable promissory note, as aforesaid, payable to pl'ffs and said City National Bank, as aforesaid, in the sum of $19,033.00, as aforesaid; that plaintiffs received, accepted, and took possession of said promissory note, as aforesaid, and released all their lien on said cattle, as aforesaid, by virtue of the instruments sued on, as aforesaid; that after the execution of said note and before the filing of plaintiffs' petition this defendant paid on said note to plaintiffs and to said City National Bank the sum of $5,261.00, as will more fully appear by the
57 credits indorsed on said note; that plaintiffs are now and have been ever since the execution thereof in possession of this def't's said promissory notes.

That this def't is ready and willing and has always been ready and willing to pay off the balance of said promissory note whenever the same is presented to him for payment, and he here demands the surrender of said promissory note to him, this defendant, and now tenders to pl'ffs the amount due said pl'ffs on said note if, upon proof, it should appear that pl'ff is entitled to such sum under the facts as hereinafter more fully are set forth.

BALL & McCART,
Att'ys for s'd Def't.

13th. Further answering herein, the defendant avers that on, to wit, the 20th day of March, 1880, this defendant and his codef't, John A. Oneal, entered into a written contract to and with each other in the city of Fort Worth and State of Texas, whereby it was agreed that the def't Oneal should sell and this defendant should purchase the cattle described in pl'ffs' petition as being in the possession of this defendant in the county of Montague.

That after the execution of said contract and upon the same day, to wit, 20 March, 1880, this defendant entered into a certain
58 other contract in writing concerning said cattle with the plaintiffs and with the "City National Bank of Fort Worth," a banking corporation doing business in the city of Fort Worth, Texas; that by the terms of said contract it was agreed between the def't and pl'ffs and said City National Bank as follows:

1st. That said Oneal should deliver all the cattle he should gather by the 10th day of May, 1880, to this def't at the time and place and

for the price agreed on between said Oneal and this def't in the written contract of that date.

2. That the plaintiffs and said City National Bank having liens upon all of said Oneal's cattle, this def't should assume the payment of said Oneal's indebtedness to said pl'ffs and s'd City National Bank to the extent of the contract price of said cattle so to be delivered, prorating said money between pl'ffs and said City National Bank according to their respective claims against said Oneal.

3. That this def't should have the full legal possession and control of said cattle, but, having contracted to buy them on credit, should hold them as the mutual trustee of pl'ffs and said City National Bank until he should pay off his note to be given for said cattle, and that plaintiffs and said City National Bank should
59 select a mutual agent to accompany said cattle (it having been before understood and agreed between all parties that said cattle were to be driven by this def't out of the State to market), and who should have possession of this def't's note for the said purchase-money of said cattle and should receive payment from this def't on said notes as fast as this defendant should sell said cattle.

For more particularity this def't refers to said contract, a copy of which he attaches hereto and marks the same a part hereof (marked Exhibit "A"); that after the making, signing, and delivering said contract and agreement, on, to wit, the 22d day of May, 1880, this def't and pl'ffs and said City National Bank and said def't, John A. Oneal, met together at the town of Will's Point, in Van Zandt county, Texas, at or near which place said cattle were to be delivered to this def't by said Oneal, for the purpose of consum-ating said contract and delivering said cattle to this def't; that said Oneal, by and with the consent and approbation of pl'ffs and said City National Bank, proceeded to deliver and did deliver then and there to this def't, to wit, 1,741 head of cattle, of the value and at the price of nineteen thousand and thirty-three dollars ($19,033.00);
60 that said cattle consisted of steers of different ages, cows, & bulls, and were gathered from and composed of cattle in all the different stocks and brands that belong to said Oneal, a portion of said cattle being in other different brands than the O N brand upon which pl'ffs claim their lien, to wit, 400 head thereof, and are the same cattle levied on under the writ of sequestration issued herein to Montague county, except those which were heretofore sold and disposed of as hereinafter set forth.

That in pursuance to said contract this defendant then and there made, executed, and delivered to pl'ffs and said City National Bank his certain negotiable promissory note for the said sum of $19,033.00, payable to the order of pl'ffs and said City National Bank one day after date, and bearing interest from date, and further providing therein that said note should be paid in accordance with the contract and Exhibit "A," hereinbefore referred to. And thereupon this def't took possession of said cattle, the said Oneal having then and there executed and delivered to this def't a bill of sale therefor, and proceeded to drive the same out of the State of Texas to market, with the full approbation and consent of plaintiffs and said City National Bank

and his codef't Oneal; that it was then and there agreed
61 between pl'ffs and said City National Bank and this def't and def't Oneal that said pl'ffs were entitled to and should receive from this def't and of the proceeds of said note the sum of $9,317.22, and that said City National Bank should in like manner receive from this def't the sum of $9,715.78, the remainder of said note, and it was then and there fully understood and agreed between all parties (said note being made payable jointly to said pl'ffs and said City National Bank as aforesaid) that said note and the proceeds thereof was to be prorated between the pl'ffs and the City National Bank upon said basis; that thereupon and then and there the pl'ffs received and accepted this def't's note as aforesaid in lieu of the said sum of $9,217.22 of their indebtedness against said Oneal, and the City National Bank in like manner then and there received and accepted def't's said note in lieu of the sum of $9,715.78 of its indebtedness against said Oneal, this defendant assuming the payment thereof in accordance with the terms of said contract, and the pl'ffs and said City National Bank then and there executed and delivered to said Oneal their respective receipts for said amounts and then and there release all and waived all their liens and claims against said
62 cattle except the joint claims and lien they had on the same by reason of the unpaid purchase-money due from this def't under the contract made with him, this def't, as aforesaid; that pl'ffs and said City National Bank, in pursuance of the stipulations of the contract made with this defendant as aforesaid, agreed upon and selected Gen. H. E. McCullough as their mutual agent to take possession of this def't's said note and accompany this def't to market with said cattle and receive payment from this def't of said note and disburse the same to pl'ffs and said City National Bank in accordance with said agreement and contracts and according to the proportion agreed upon as aforesaid; that said McCullough then and there agreed to act as mutual agent of pl'ffs and said City National Bank as aforesaid, and pl'ffs and said bank then and there delivered to him, as agent as af's'd, this def't's said note for collection and disbursement as af's'd, and the said McCullough, as agent of both of said parties as af's'd, proceeded to accompany and did accompany this def't on the drive to market, out of the State aforesaid, with said cattle; that after this def't had received said
63 cattle and started with them to market as af's'd, on, to wit, the same day, 22 May, 1880, and before the same had been driven out of the county of Van Zandt, this def't sold, to wit, 263 head thereof for the sum of, to wit, $3,419.00, which said sum was by this def't, in accordance with the stipulations of his s'd contract with said pl'ffs and said bank, paid over to the said McCullough, as their mutual agent as af's'd, and was by him, the said McCullough, in the presence of this def't, duly paid over to pl'ffs and said bank, in the proportion thereof agreed upon as af's'd—that is to say, McCullough paid to pl'ffs $1,668.50 and to said City National Bank $1,750.50 of said amount, which said sums *was* by said McCullough duly credited on this def't's said note; all of which acts of the said

McCullough were done in the presence of and duly ratified and confirmed by the pl'ffs and said bank.

That on the 26 day of May, 1880, this def't sold certain other cattle out of said herd, and in accordance with the stipulation of said note and contract paid to said McCullough, as agent as af's'd of pl'ffs and said bank, the sum of $1,842.00, which said sum was duly entered by said McCullough as a credit on this def't's said note,
64 but said McCullough, as this def't is informed and believes and charges, paid the whole of said sum of $1,842 to plaintiffs and none of the same to said bank; wherefore there is a balance due to pl'ffs on said note of $5,806.72 and to said City National Bank a balance of $7,965.28, according to the proportion and *pro rata* agreed upon between the parties as aforesaid.

This def't avers that he, in company with said McCullough, as mutual agent of the parties as aforesaid, was proceeding to drive and was driving said cattle to market for the purpose of selling the same and paying off and discharging his said note to pl'ffs and said bank given as aforesaid, and had gotten into said county of Montague with the herd of cattle, when the plaintiffs brought their action and caused to be issued the writ of sequestration herein and caused all of said cattle to be seized thereunder without notice or warning of any kind to this defendant.

This def't avers pl'ffs *in* the City National Bank as aforesaid still holds this defendant's said note for said cattle, and that pl'ffs have in no manner attempted to return the same to this defendant or cancel the same, and that the same is still an outstanding obligation
65 and chose in action against this defendant.

This defendant avers that he is and always has been ready and willing to carry out his contract made with pl'ffs and said City National Bank as aforesaid for the payment for said cattle as aforesaid, and that at the time of the seizure of s'd cattle under the writ of sequestration herein as af's'd he was proceeding in good faith to carry out his said contract. Wherefore, the premises considered, he prays judgment of the court if pl'ffs can be heard to set up and seek to enforce their said pretended lien upon said cattle and whether the same be not merged in the subsequent contract made with this def't as af's'd.

BALL & McCART,
Att'ys for s'd Def't.

And now this defendant avers that the plaintiffs wrongfully, oppressively, maliciously, and without just or probable cause sued out the writ of sequestration issued herein against this def't, and caused the same to be levied on the cattle hereinbefore described in the possession of this defendant in said Montague county; and this def't avers that said plaintiffs had no valid lien on said cattle by reason of the instrument of writing set up and sued on in their said
66 petition, and well knowing that they had deliberately waived their said lien, if any they had, on said cattle, and were estopped at law and in equity from setting up and enforcing the same against the cattle purchased by this defendant as aforesaid, and well

knowing that they were bound by their acts and declarations hereinbefore related, deliberately, wrongfully, oppressively, maliciously, and without any just or probable cause caused said cattle to be levied upon and seized and taken away from this defendant under said writ of sequestration as aforesaid; and this def't avers that the statements made in the plaintiffs' affidavit, made herein for the purpose of obtaining the issuance of said writ, were false and fraudulent, for said plaintiffs and their said agent who made oath to said affidavit knew that there was no just reason for believing that this defendant would waste said cattle, nor did they or either of them believe the same to be true, nor was the same true in any particular; and said affidavit was fraudulent and essentially false, in this, that it states that the affiant fears that this defendant would remove said cattle out of Montague county, when pl'ffs and said affiant, their agent, well knew that said cattle were being driven through
67 Montague county and had started from Van Zandt county and were only temporarily in said Montague county, as hereinbefore related, and well knew that neither of said defendants resided in said Montague county, and that said cattle were being driven through said county to market with the express approbation and consent of pl'ffs and under the contracts as hereinbefore related.

This defendant avers that, by reason of the premises and by reason of the wrongful and malicious suing out of said writ of sequestration by pl'ffs as aforesaid and the seizure from def't of his said cattle thereunder as af's'd, this def't has suffered actual damages in the sum of $5,000.00, for this def't avers that, relying upon the acts, contracts, and declarations of pl'ffs hereinbefore set forth, def't employed hands to drive said cattle and assist in driving and herding said cattle to market in the Indian nation as aforesaid at an expense to this def't up to the time of their seizure under said writ of, to wit, $1,000.00; and this def't incurred further expense and was himself at great trouble and labor in driving and causing to be driven cattle from said Van Zandt to said Montague Co., when they were seized under said writ, of, to wit, of the value of $1,000.00; and this
68 def't avers that at the time of the seizure of said cattle he had said cattle under contract to be sold at a profit of, to wit, $3,000.00, and at that advance over and above the price he had purchased said cattle from said Oneal as aforesaid; and defendant avers that by reason of the malicious suing out of said sequestration and levy of the same as aforesaid he has been damaged in, to wit, the sum of ten thousand dollars, which last sum he claims as punitory and exemplary damages; wherefore he pleads said sum of fifteen thousand dollars damages sustained by this def't from pl'ffs as af's'd in reconvention against said pl'ffs and pray- judgment against them therefor.

BALL & McCART,
Att'ys for s'd Def't.

And, further pleading in reconvention against pl'ffs, this def't avers that said pl'ffs and their said agents, well knowing the premises as aforesaid, made said false and fraudulent affidavit as afore-

said and wrongfully, oppressively, and maliciously and without just or probable cause as aforesaid sued out said writ of sequestration as aforesaid and caused the seizure of this def't's cattle thereunder as aforesaid, and this defendant was actually damaged thereby in the sum of $——, for said cattle were taken from the possession of this def't by the sheriff of Montague county and the same was kept out of
69 this def't's possession for the time and period of, to wit, 8 days; that during said time this def't was compelled to pay out for hire and feed of hands who had already been hired by him, he being compelled under his contract with said hands to retain them in his service, the sum of, to wit, $150.00; that this def't was compelled to leave said cattle, being a stranger in said county of Montague, and travel to Tarrant county to procure sureties on his replevin bond herein, at great trouble and labor and expense and loss of time of, to wit, the sum of $200.00; that at the time said cattle were seized, and on the — day of ——, 1880, this defendant had contracted to be present and receive from one L. L. Shields certain other cattle which he, this defendant, had purchased from him, the said Shield, in the county of Coleman, Texas, and this defendant had put up as forfeit money and liquidated damages the sum of $700, which was to be paid to the said Shield in case this def't should fail to receive said cattle; that on account of the delay of eight days caused to this def't, as aforesaid, by his being compelled to travel to Tarrant county to obtain sureties on his said replevin bond as aforesaid, def't was unable and could not receive the
70 cattle of the said Shields, and was therefore compelled to pay to the said Shields the said sum of $700.00 forfeit money and liquidated damages as aforesaid; that on account of the said delay of eight days caused to this def't as aforesaid with his said cattle he suffered further actual damages, as follows: that, to wit, 300 head of the cattle so levied on and seized under said writ of sequestration, together with, to wit, 840 head of other cattle owned by this def't, had been by def't contracted to be delivered to one T. J. Allen, at the Ponca agency, in the Indian Territory, on the 20th day of June, 1880; that said contract was made, to wit, on the — day of —— and long before the seizure of said cattle under said writ as aforesaid; that this def't at the time of said seizure had said 1,140 head of cattle already contracted for af's'd, together with the remainder of said purchase from said O'Neal & pl'ffs & the bank as af's'd, and certain other cattle, to wit, — head, amounting in the aggregate to, to wit, 2,050 head altogether, in one and the same herd, and all being driven, as aforesaid, to the Indian Territory, part under contract as aforesaid and the remainder this defendant was driving to general market and for the purpose of sale generally; that of the cattle not under contract, to wit, 586 head were beeves
71 and 3-year-old steers; that this def't had all of said cattle under one herd, driving the same to market as af's'd and to fill s'd contract as af's'd, and that he had gotten to the s'd county of Montague on his way to market as aforesaid, in which said county def't avers he was a stranger; that it was impossible, as def't will be able to verify, and by reason of the premises, for this defandant

to separate his cattle in said herd that were not under contract from those which were under contract, being unable to procure hands to drive a second herd and being unable to dispose of his said cattle not under contract without great loss and without the total loss thereof, and that he was consequently compelled to continue on his road to said Ponca agency with his whole herd of cattle in the same manner in which he was driving them at the time of the levy of said writ; that if he should have failed to deliver the cattle to said Allen as per his said contract, he, this def't, would have been liable to and bound to pay to said Allen a large sum of money, to wit, the sum of $5,000.00; that by reason of the delay of 8 days, caused as aforesaid by the seizure of the said cattle as aforesaid, this def't was compelled to drive his whole herd of said cattle at a very hard
72 and rapid pace in order to fill his contract with said Allen as aforesaid and reach the Ponca agency by the said 20th day of June as aforesaid; that if his said cattle had been unmolested and not seized as aforesaid he would have been able to have reached said Ponca agency by said 20th June by easy drives, and could have taken the whole of said cattle there in good order; but having been compelled to drive them at a hard and rapid pace as aforesaid it thereby greatly injured and damaged and deteriorated in quality his said beeves and three-year-old steers, and caused this defendant actual & special damage to the amount of, to wit, $2,315.75, as follows: Damage on 210 head of beeves, $6.00 per head; damage on 183 head of 3-y'r-olds, $4 per head, and on 193 head of other 3-y'r-olds, $3.75 per head.

And this def't further avers that by the said malicious, wrongful, and oppressive acts of pl'ffs in suing out and causing to be levied said writ of sequestration as af's'd he has been damaged in the further sum of ten thousand dollars, which last sum he claims as punitory and exemplary damages.

Wherefore this def't pleads said sum in reconvention against plaintiffs.

BALL & McCART,
For s'd Def't.

73 The premises considered, this defendant prays judgment for his said damages against pl'ffs, and that plaintiffs' petition, as to this defendant, be dismissed, and that this defendant have judgment for his costs and for such other and further reliefs, general and special, to which he may be found entitled on a final hearing, as in duty bound, &c.

BALL & McCART,
Att'ys for s'd Def't.

Motion to Quash Affidavit & Bond. Filed Dec'r 28, 1880. *R. E Brown, Clerk Dist. Court.*

HUNTER, EVANS & Co. *vs.* JOHN ONEAL *et al.*

Suit pending in dist. c't of Montague Co.

Now comes the defendant, John Dawson, and moves the court to quash the affidavit and bond for writ of sequestration filed herein on 31st day of May, 1880, and said sequestration proceedings, for the following reasons:

1st. Because said affidavit fails sufficiently to state the fact of the existence of the mortgage lien which pl'ffs asks to enforce and foreclose.

2. Because it is evident from and contradictory on its face of pl'ffs' petition, in that while the truth of the matters contained
74 in said petition are averred in said affidavit, and which by their said petition plaintiffs claim & ask to foreclose a mortgage lien on certain cattle therein described, viz, certain cattle branded "O N" on hip and side and marked swallow fork in each ear, and various other marks, said pl'ffs in their said affidavit describe and seek to sequester other and different cattle, viz., certain cattle road-branded "⌐" on the side and nearly all branded O N.

3. Because said affidavit fails to describe the property to be sequestrated with sufficient certainty, in that the words "nearly all" were to- indefinite, and in that it fails to state how many of said cattle to be sequestered are branded "O N," and in that it fails to state the marks of said cattle or of any of them or on which portion of the body of the animals said brand of "O N" is on.

BALL & McCART,
STEPHENS & MATLOCK,
Att'ys for s'd Def't.

4. Because the said bond is and was not accompanied by a sufficient affidavit at the time of its execution.

BALL & McCART,
STEPHENS & MATLOCK,
Att'ys for s'd Def't.

Motion to Quash Writ of Sequestration & Sh'ff's Return. Filed Dec. 28, 1880. *R. E. Brown, Clerk Dist. Court.*

75 HUNTER, EVANS & Co. } No. 538.
vs.
JOHN A. ONEAL *et al.* }

Suit pending in the district court, Montague county.

And now comes the defendant, John Dawson, in the above-entitled cause, and moves the court to quash the writ of sequestration and sheriff's return thereon (said writ being issued May 31st, 1880).

1st. Said writ is and was issued upon an illegal and insufficient affidavit.

2nd. Said writ fails to describe the property to be seized with sufficient certainty.

3. The sheriff's return thereon fails to describe the cattle seized under said writ with sufficient certainty, in that it described certain cattle as being nearly all branded thus, "O N," but fails to state how many of said cattle were branded "O N," as aforesaid.

STEPHENS & MATLOCK.
BALL & McCART,
Att'ys for s'd Def't.

Agreement. Filed Dec. 21, 1880. *R. E. Brown, Clerk Dist. Court M. Co.*

HUNTER, EVANS & Co. *vs.* DAWSON & ONEAL.

In district court of Montague Co., Texas.

DALLAS, TEX., *Dec'r* 17, 1880.

It is hereby agreed by and between the parties to the above
76 cause that the same shall be set for trial on Tuesday, Dec'r 28th, 1880, and it is agreed that either party may then demand a jury in the same manner & with the same effect as if on first day of term; no pleadings required to be filed or is any action to be taken in the case until the said 28th.

COWART & EBLIN & ROBERTSON,
Att'ys for Plaintiffs.
BALL & McCART,
Atty's for Def't Dawson.
J. C. KERBY,
Att'y for O'Neal.

Plea of Jurisdiction. Filed Dec'r 28th, 1880. *R. E. Brown, Clerk Dist. Court.*

HUNTER, EVANS & Co.
vs.
JNO. ONEAL & JNO. DAWSON. } No. 538.

In the district court of Montague county.

Now comes the plaintiffs in the above cause, R. D. Hunter, A. G. Evans, & M. P. Buel, and respectfully show that they are citizens of the State of Missouri and were citizens of said State at the date of the institution of this suit; that the defendants, Jno. Oneal and Jno. Dawson, are citizens of the State of Texas, and were at the date of the institution of this suit; that said cause has never been tried, and the term now being held of this hon. court is the first term at which said cause could be tried; wherefore your petitioners
77 pray the court for an order of removal of said cause to the circuit court of the United States for the northern district of

Texas, at Dallas, to be commenced at Dallas on the first Monday in June next, and we herewith tender good & sufficient security, conditioned as requested by law, &c., &c.

HUNTER, EVANS & CO, *Pl'ffs*,
By A. G. EVANS, *One of the Pl'ffs.*

Sworn to and subscribed before me by A. G. Evans this Dec. 28th, 1880.

[SEAL.]

R. E. BROWN,
Cl'k D. C. Montgomery County.

Bond. Filed Dec. 28th, 1880. *R. E. Brown, Clerk Dist. Court.*

HUNTER, EVANS & Co.
vs.
JNO. ONEAL & JNO. DAWSON. } No. 538.

Suit pending in the district court of Montague county.

Know all men by these presents that we, Hunter, Evans & Co., as principals, and F. M. Kinsey and G. W. Barefoot, as sureties, are held and firmly bound unto Jno. Oneal and Jno. Dawson in the full sum of five hundred dollars; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators—witness our hands this Dec'r 28th, 1880—conditioned that if the said Hunter, Evans & Co. shall enter in the circuit court of the United States for the northern district of Texas, at Dal-
78 las, on the first day of its next session, to be commenced and holden in the city of Dallas, on the first Monday in June, 1880, a copy of the record in the above-entitled cause and that they will pay all costs that may be awarded by said circuit court if said court shall hold that said suit was wrongfully or improperly removed thereto and that they will appear in said cause, then the above obligation to be void; otherwise to remain in full force and effect.

HUNTER, EVANS & CO.
F. M. KINSEY.
G. M. BAREFOOT.

Exceptions to Plea of Defendant Oneal to Jurisdiction.

In U. S. Circuit Court, at Dallas. In Chancery.

HUNTER, EVANS & Co.
vs.
JNO. DAWSON & JNO. ONEAL. } No. —.

Now come the complainants in the above-entitled cause and except to the plea to the jurisdiction of Montague county district court, for that—

1st. The said plea depends for its determination upon matters involved in the merits of the controversy between the parties hereto, to wit, whether upon all the facts the agreements between the par-

ties hereto referred to as having been made in Fort Worth, Texas, were binding upon the complainants after a breach thereof
79 by the other parties & whether or not there was such breach.

2d. The said plea to the jurisdiction presents a defence to the merits of the complainants' suit and not an objection to the jurisdiction.

3d. The said plea to the jurisdiction has been waived by the appearance & pleas of the defendant Oneal's codefendant, Jno. Dawson.

4th. The said plea presents no valid exception to the jurisdiction of this court.

5th. The said plea is not supported by the certificate of counsel, as required by the rules of this court.

Wherefore complainants move the court to quash said plea, & so, &c.

WATTS & COWART &
EBLEN & ROBERTSON,
Sol'tor- for Complainant-.

And, in the event said motion is refused, then complainants pray the court for leave to take issue with said defendant upon the allegations of said plea that the truth thereof may be adjudged.

WATTS & COWART &
EBLEN & ROBERTSON,
Solicitors for Complainants.

(Endorsed:) No. 21. Ch'y. Hunter, Evans & Co. *vs.* Jno. Dawson & Jno. Oneal. Exceptions to plea of defendant Oneal to jurisdiction. Filed June 6, 1881. A. J. Houston, clerk.

Motion to Strike Out Defendants' Demurrers.

In the Circuit Court of the United States in & for the North-
80 ern District of Texas, at Dallas. In Chancery.

HUNTER, EVANS & Co.
vs.
JNO. DAWSON & JNO. ONEAL. } No. —.

Removed from Montague county.

Now come the complainants in the above-entitled cause and move the court to strike out the general & special demurrers filed by defendants severally to the complainants' pleadings herein on the ground that the same are not supported by the certificate of counsel or supported by the oath of the party demurring, as required by the rules of this court, & so, &c.

WATTS & COWART &
EBLEN & ROBERTSON,
Solicitors for Complainants.

(Endorsed:) No. 21. Ch'y. Hunter, Evans & Co. *vs.* Jno. Dawson & Jno. Oneal. Motion to strike out defendants' demurrers. Filed June 6, 1881. A. J. Houston, clerk.

Pl'ffs' Exception to Answers.

In the U. S. Circuit Court, at Dallas. In Chancery.

HUNTER, EVANS & Co.
vs.
JNO. DAWSON & JNO. ONEAL. } No. —.

Now come the complainants in the above-entitled cause and except to the answer of the defendants, Jno. Oneal & Jno. Dawson, herein filed, for that—

1st. The answer of the said Jno. Oneal does not reply specifically to the allegations of complainants' bill, as required by the rules of this court.

81 2d. The said answer, in the portions thereof referring to the account attached to the deposition of one of complainants' witnesses, is unintelligible without such reference and said reference is unauthorized.

3d. The said answer presents no account between the complainants and the said Oneal and does not show the state of said accounts.

4th. The said answer sets up claims in set-off, unliquidated & stated in round numbers, without furnishing therein the basis upon which this court could adjust or ascertain the matters charged.

5th. The answer of the said Jno. Dawson, in the first three subdivisions thereof, presents no defence to the complainants' suit and no response to their charges in their original bill herein.

6th. The fourth and seventh paragraphs of said answer are contradictory, the one denying & the other admitting notice of complainants' lien upon the property sequestered.

7th. The charge in the 5th paragraph of said answer that complainants' mortgage is met by the admission of notice contained in the 7th paragraph aforesaid *and* does not specify the manner in which the said mortgage was recorded.

8th. The 13 paragraph of said answer is by the terms
82 thereof made to depend upon an exhibit thereto alleged to be attached, when no such exhibit is attached and when by the allegations of said paragraph the same is referred to for a particular statement of the facts upon which the defence attempted to be set up in said paragraph is made to depend.

9th. And for that the remainder of said answer, in form a plea in reconvention for damages, is insufficient as such in law or equity, in that the matters of damage therein set up are not stated with such certainty as will enable the court to proceed to decree thereon, and the said damages are remote consequential and not such as can be taken cognizance of by this court.

10th. And for that in neither of said answers is there any specific response to the allegations of complainants' bill, nor are the matters averred verified as required by the rules of this hon. court respecting such answers.

For all which the said complainants pray the court that said defendants be required to answer over, & so, &c.

WATTS & COWART &
EBLEN & ROBERTSON,
Solicitors for Complainants.

(Endorsed:) No. 21. Ch'y. Hunter, Evans & Co. *vs.* Jno. Oneal & Jno. Dawson. Exceptions to answers. Filed June 6, 1881. A. J. Houston, clerk.

83 *Motion to Remand.*

In U. S. Circuit Court at Dallas. In Chancery.

HUNTER, EVANS & Co.
vs.
JNO. A. ONEAL & JNO. DAWSON. } No. 21.

Now comes the def't, Jno. A. Oneal, and shows to the court that the above-entitled cause was, by order of the hon. district c't of Montague Co., Texas (the county in which this action was instituted by pl'ffs), made on the — day of December, 1880, removed to the hon. circuit court of the U. S. for the northern district of Texas, at Dallas; that at the time of the making of said order of removal by said hon. court there was pending before said court undetermined and unadjudicated a plea to the jurisdiction of said court of said cause filed by this def't; that said court, without determining the merits of said plea and over the objection of this def't, did order the removal of this said cause from said court to this hon. court. Wherefore this def't moves the court to remand said cause to the dist. court of Montague county, Texas.

J. C. KEARBY,
One of the Att'ys for John Oneal.

Sworn to and subscribed before me this June 20th, 1881.
W. M. EDWARDS, *J. P.*

(Endorsed:) No. 21. Chancery. Hunter, Evans & Co. *vs.* John A. Oneal & Jno. Dawson. Filed June 20, 1881. A. J. Houston, clerk.

84 *Appearance of City National Bank of Fort Worth.*

In United States Circuit Court, Northern District Texas, at Dallas.
In Chancery.

HUNTER, EVANS & Co.
vs.
ONEAL, DAWSON, & THE CITY NATIONAL BANK OF FT. WORTH.

Rule day in November, 1881.

And now comes the City National Bank of Ft. Worth, by its solicitors, and enters its appearance as a defendant in this case.

WELLBORN, LEAKE & HENRY,
Solicitors for said Defendant, The City National Bank of Ft. Worth.

(Endorsed:) No. 21. Cir. c't. Chancery. Hunter, Evans & Co. *vs.* Oneal, Dawson, & The City National Bank of Ft. Worth. Appearance of the defendant bank. Rule day in November, 1881. Filed Nov. 7, 1881. A. J. Houston, clerk.

Demurrer of Jno. A. Oneal.

In the United States Circuit Court for the Northern District of Texas, at Dallas. In Chancery.

HUNTER, EVANS & CO.

vs.

JOHN A. ONEAL & JOHN DAWSON & THE CITY NATIONAL BANK OF FT. WORTH.

The demurrer of defendant, John A. Oneal, to plaintiffs' original and amended bills of complaint filed against the above-named defendants, he not waiving, but insisting upon his demurrer, exceptions, and plea hereinbefore filed in the district court of Montague Co.

85 This defendant, by protestation, not confessing any of the matters in and by said bills complained of to be true in manner and form as the same are set forth, says that he is advised that there is no matter or thing in said bills good and sufficient in law to call this defendant to account in this honorable court for the same, but that there is good cause of demurrer thereunto, and he does demur accordingly, and for cause of demurrer says:

1st. If said bills of complaint were true they contain no matter of equity whereon this court can ground any decree or give complainant- any relief as against this defendant.

2d. It appears from the allegations of said bills that this court has no jurisdiction over any of the defendants herein or of this suit, because plaintiffs' original and amended bills show that neither one of said defendants resided in the county of Montague when said original bill was filed in the district court of said county, and neither said bill or said amended bill alleges any other or different ground of jurisdiction in said court, and because said bills show that the property on which pl'ffs claim to have a lien was situated in the

86 county of Van Zandt and not in the county of Montague when said original bill was filed, and that the district —. Wherefore and for divers other errors in said bills contained and appearing on the face thereof this defendant does demur thereto and humbly craves the judgment of this honorable court whether he is compellable to make any answer thereunto otherwise than as aforesaid; and he humbly prays to be hence dismissed, with his costs and charges in this behalf most wrongfully sustained.

We certify that in our opinion the foregoing demurrer is well founded in points of law.

WORD & KEARBY &
WELLBORN, LEAKE & HENRY,
Solicitors for Def't.

I, John A. Oneal, defendant in above case, upon my oath say the foregoing demurrer is not interposed for delay.

JOHN A. ONEAL.

Subscribed and sworn to before me the 29th day of Nov., A. D. 1881.

Witness my hand and seal of office hereto attached.

[SEAL.] ALFRED H. BENNERS,
Notary Public, Dallas County, Texas.

(Endorsed:) No. 21. Cir. court. Chancery. Hunter, Evans & Co. *vs.* John A. Oneal, John Dawson, & The City National Bank of Fort Worth. Demurrer of John A. Oneal. Filed Dec. 6, 1881. A. J. Houston, clerk.

Demurrer of Jno. Dawson & The City National Bank.

In United States Circuit Court, Northern District Texas, at Dallas.
In Chancery.

87 HUNTER, EVANS & CO.

vs.

JOHN A. ONEAL, JOHN DAWSON, & THE CITY NATIONAL BANK OF FORT WORTH.

The joint and several demurrer of John Dawson and The City National Bank of Ft. Worth to the original and amended bill of complainant of Hunter, Evans & Co.

These defendants, by protestation, not confessing any of the matters in and by said bill complained of to be true in manner and form as the same are set forth, severally say they are advised that there is no matter or thing in said bill good and sufficient in law to call these defendants to account in this honorable court for the same, but that there is good cause of demurrer thereunto, and they do demur accordingly, and for causes of demurrer say:

1st. If said bill were true it contains no matter of equity whereon this court can ground any decree or give complainant any relief as against these defendants.

2. It appears from the allegations of said bill that this court has no jurisdiction over any of the defendants, because plaintiffs' original and amended bill- show that neither one of the said defendants resided in the county of Montague when the original bill was filed in the district court of said county, and said bill nor the
88 amended bill does not allege any other ground of jurisdiction in said court.

Wherefore, and for divers other errors in said bill contained and appearing on the face thereof, these defendants do demur thereto and humbly crave the judgment of this honorable court whether they are compellable or ought to make any answer thereunto otherwise than as aforesaid; and these defendants humbly pray to be

hence dismissed, with their costs and charges in this behalf most wrongfully sustained.

We certify that, in our opinion, the foregoing demurrer is well founded in point of law.

BALL & McCART,
WELLBORN, LEAKE & HENRY,
Solicitors for Defendants.

THE STATE OF TEXAS, *County of Tarrant:*

Before D. D. Wall, a notary public within and for the county of Tarrant, in the State of Texas, this day personally appeared S. W. Lomax, who, as agent and attorney-in-fact for the City National Bank of Ft. Worth, on oath says that the foregoing demurrer is not interposed for delay.

S. W. LOMAX.

Subscribed and sworn to before me the 29 day of November, A. D. 1881.

Witness my hand and official seal.

[SEAL.] DENISON D. WALL,
Notary Public, Tarrant County, Texas.

89 (Endorsed:) No. 21. Cir. court. Chancery. Hunter, Evans & Co. *vs.* John A. Oneal, John Dawson, & The City National Bank of Ft. Worth. Demurrer of John Dawson & The City National Bank of Ft. Worth. Filed Dec. 6, 1881. *Filed Dec.* 6. 1881. A. J. Houston, clerk.

Amended Bill.

HUNTER, EVANS & Co., Complainants,

vs.

JOHN A. ONEAL & JOHN DAWSON, Defendants.

Suit pending in the circuit court of the United States in and for the northern district of Texas, at Dallas, in chancery.

Hunter, Evans & Co., a firm composed of R. D. Hunter, A. G. Evans, & M. P. Buel, doing business as such in the city of East Saint Louis, State of Illinois, and each of them resident citizens of the city of St. Louis, State of Missouri, complainants in the above suit, by leave of the court amend their original bill filed herein, and thereupon your orators respectfully show:

I.

That on, to wit, the 20th day of August, 1879, the defendant, John A. Oneal, with whom for a long time, to wit, from the 15th day of February, A. D. 1879, your orators, as commission merchants & dealers in live stock in the city of East St. Louis, had been
90 dealing, was largely indebted to your orators and was desirous of further advancements from them.

Whereupon your orators show that the said defendant made and delivered to your orators his two certain promissory notes described in the original bill herein, and at the same time made & delivered to your orators a bill of sale of all of his home stock of cattle, consisting, as described in said bill of sale, of beeves, three-year-olds, two-year-olds, cows, bulls, yearlings, and calves, branded O N on the hip and side and marked with swallow fork in each ear and various other marks; that said bill of sale was thereafter duly authenticated for record and duly recorded in the office of the clerk of the county court in and for Van Zandt county, Texas, in which said county the said John Oneal then & still resides, and in which said county the said cattle were then principally upon the range, all of which will more fully appear by reference to the said bill of sale, hereto attached as part hereof, marked "Exhibit A."

That said bill of sale, although absolute in form, was intend- by all the parties thereto as security for the said two notes (and a third note involved in this controversy) and such other balances
91 upon account as should be ascertained upon settlement to be owing by the said Oneal to your orators; that at the same time your orators made and delivered to said John Oneal a defeasance of said bill of sale, by the terms of which the said bill of sale was to become void upon the payment of said notes by said Oneal, and such other balances upon account as should be ascertained upon settlement.

That a copy of said defeasance is hereto attached as part hereof, marked "Exhibit B;" that the original thereof is now in the possession of said Oneal, and he is hereby notified to produce the same upon the trial & hearing of this cause that it may be used as evidence.

That, pursuant to the intent and purpose of the parties at the date aforesaid, the said Oneal continued to draw his drafts upon your orators and to ship them cattle for sale on commission as theretofore until about the 1st day of February, A. D. 1880; that at said date the said Oneal was indebted to your orators in the sum of eighteen thousand six hundred & sixteen & $\frac{49}{100}$ ($18,616.49) dollars by account, which said sum represented & was the amount then due upon the said two notes aforesaid; that the transactions by and between your orators and the said Oneal in which his said in-
92 debtedness accrued to them is fully shown by an itemized account, hereto attached as part of this bill, marked "Exhibit C;" and your orators show that each and all of the acceptances or drafts therein mentioned were drawn by the said Oneal and by his authority upon your orators in favor of divers parties, and each and all of which were duly accepted & paid by your orators & the amounts thereof charged to the account of the said Oneal pursuant to the intent of the parties, and that the said Oneal received the benefit of such acceptance & payment of the same by your orators; that all items of money paid to hands & other parties, as shown by said account, were paid out & disbursed by your orators upon the authority and at the request of the said Oneal, and that he received the benefit thereof. Your orators would further show that all the items

& charges and credit shown by said account are true & correct, and truly and correctly shows the business transactions by and between said Oneal and your orators out of which said indebtedness accrued to your orators.

Afterwards, to wit, the — day of February, 1880, your orators received and collected from the Texas & Pacific Railway Company for and on account of the said Oneal the sum of ($625.00) six
93 hundred and twenty-five dollars, and applied the same as a credit upon the account of the said Oneal; that, to wit, the 22nd day of May, 1880, your orators received from the sale of a small portion of the cattle included in the said bill of sale to your orators, through H. E. McCullough, the sum of one thousand six hundred & sixty-eight & $\frac{38}{100}$ ($1,668.38) dollars, which sum was also applied by your orators as a credit upon the account of said O'Neal, and that, to wit, May 31st, 1880, when this suit was instituted, the said Oneal was then justly indebted to your orators upon the two notes hereinbefore mentioned in the sum of sixteen thousand nine hundred & nineteen & $\frac{38}{100}$ ($16,919.38) dollars, which said sum had then long since become due and payable, and frequent demands for the payment thereof had been — upon the said Oneal, but he had failed & refused and still fails & refuses to pay the same or any part thereof; that your orators are now and have been since the execution thereof, & were at the time of the institution of this suit, the owners & holders of said two notes.

II.

Your orators would further show that long after the execution of said bill of sale by said O'Neal to your orators, to wit, the —
94 day of ——, A. D. 1879, he claimed to have become indebted to the City National Bank of Fort Worth in a large sum of money, to wit, about nine thousand dollars; that said bank was then & still is doing business as a national bank in the city of Fort Worth, Tarrant county, Texas, under and by virtue of the statutes of the United States as a national bank; that said Tarrant county is within the northern district of Texas & within the jurisdiction of this court.

That John Nichols was then the president of said bank, and to secure the amount of said pretended indebtedness said Oneal executed and delivered to said John Nichols certain deeds of trust, mortgage, or written liens upon the same cattle described in the said bill of sale given by the said Oneal to your orators, besides other cattle, some land, & other property; that said written liens were given by said Oneal to said John Nichols upon the said O N stock of cattle, subject to the bill of sale theretofore given to your orators, of the existence of which all of said parties had full notice, as will appear by the recitals in said written lien so as aforesaid given to the said Nichols by said O'Neal. The said original written liens are now in the possession & under the control of said
95 City National Bank of Fort Worth and said O'Neal, and they are each hereby notified to produce the same upon the trial hereof so that the same may be used as evidence.

Now, notwithstanding the said written liens given by the said Oneal to the said Nichols as aforesaid were, by the express terms and stipulations therein contained, subject to the lien of the bill of sale to your orators on said O N stock of cattle, yet, when in February, 1880, your orators were urging payment of their indebtedness from said Oneal and threatening to sue upon the same, the said bank asserted and claimed that the said liens to the said Nichols on said O N stock of cattle *was* superior to that of your orators, and threatened immediate litigation with respect to the said liens. At that time said O N stock of cattle were running upon the range in Van Zandt and adjoining counties and could not then be gathered, except at ruinous expense & great trouble. Pending any litigation with respect thereto, while said cattle were running upon the range, your orators well knew that the same would become worthless by straying off and being stolen & sold by other parties. To avoid such litigation and expense and loss of the said cattle your
96 orators entered into two certain contracts or agreements, dated March 20th, 1880, the two, in fact, being but part of one and the same agreement. The first of said agreements was duly signed by said Oneal, said City National Bank, and your orators, and in effect agreeing to a sale of the cattle mentioned and described in said written liens to said Nichols & in the bill of sale to your orators by said Oneal to John Dawson (which sale had then already been agreed upon by Oneal & Dawson). It was therein in effect stipulated that the said Oneal, at the time he delivered said cattle to said Dawson, *he* was to deliver to your orators and the said City National Bank the proceeds of the said sale, to wit, the paper of the said Dawson, together with the contract of sale between said Dawson & said Oneal.

And your orators & said bank were to receive such proceeds in discharge, payment, and satisfaction of their said claim against said O'Neal, provided such proceeds amounted to a sum equal to the entire amount of their said debts against him, and in the event such proceeds did not amount to the sum of the said debts, then they were to receive such proceeds and credit the same upon their debts, prorat-
97 ing the same according to the amount of said debt, and if any portion of such debt were not paid in this way said Oneal was either to pay the same in money or to secure the same by lien upon property in Van Zandt county to the satisfaction of your orators and said bank, and in the event there should arise any difference or trouble about the amount of the indebtedness of said O'Neal to your orators or to said bank, then the amount agreed to by the parties was to be satisfied and discharged as aforesaid, and the amount in dispute should be secured by the said Oneal as hereinbefore provided.

And when the disputed amount should be fixed and determined by agreements, arbitrations, suit, or otherwise the same was to be paid out of the proceeds of said sale or from the security furnished by the said Oneal, and it was therein stipulated that in the event said agreement should for any cause fail to be carried out & consum-ated, then no statement or recital therein should be construed

as an abandonment of any right, lien, or security held by any of the parties thereto, and it was therein stipulated that the said security was to be furnished at the time said cattle were delivered to
98 the said Dawson, a copy of the same is hereto attached, marked "Exhibit C," the original thereof is in the possession of said City National Bank, and it is notified hereby to produce the same upon the trial and hearing hereof that the same may be used as evidence; that at the same time the other or rather second part of said agreement was entered into and signed by the said City National Bank, your orators, and the said defendant, John Dawson, to the effect that said Dawson purchased said cattle subject to the said liens of your orators and said bank, and he assumed therein the indebtedness of said O'Neal to the said bank & your orators to the amount of the value of the said cattle delivered to him by said Oneal. In pursuance to a contract of sale between said Dawson and said Oneal, the said Dawson was to pay the amounts so assumed by the 1st day of October, 1880. Dawson was to hold the cattle in trust for said bank and your orators, and was to have the right to drive said cattle to market and make sales thereof, but that your orators and said bank were to select a man between them or each to select a man to accompany said cattle as their agent or agents, & to have the legal possession of said cattle, and to receive for your orators
99 & said bank from the purchasers thereof the proceeds of said sale, a copy of which is hereto attached as part hereof, marked "Exhibit D," the original of which is in the possession and under the control of the said bank, and notice is hereby given to produce the same upon the trial & hearing hereof that it may be used as evidence.

That by the terms of the contract of sale between said O'Neal & Dawson, made & entered into by them at the same time, said cattle were to be delivered to said Dawson by said O'Neal at Will's Point, in Van Zandt county, about the 20th day of May, 1880; said contract or agreement of sale is now in the possession & under the control of said O'Neal, Dawson, & said City National Bank, and they are hereby notified to produce the same upon the trial or hearing hereof, that it may be used as evidence; that, pursuant to the understanding of all the said parties, they met at said Will's Point, to wit, May 22nd, 1880, when, without any notice to your orators & in their absence, said O'Neal delivered to the said Dawson, at a point some two or three miles south of said Will's Point, seventeen hundred & forty-one head of cattle, all of them being the said O N stock included in your orators' bill of sale, and of the value,
100 according to said contract of sale, of nineteen thousand and thirty-three dollars, of which said cattle the said Dawson sold at the place where they were delivered to him by the said O'Neal two hundred & sixty-three cows & calves for the sum of three thousand four hundred & nineteen dollars, and paid the said amount over to Henry E. McCullough, who had been selected by said bank & your orators to accompany said cattle, and of which said amount your orators received the sum of sixteen hundred & sixty-eight & $\frac{38}{100}$ dollars, and said bank received the sum of eighteen

hundred & forty-two dollars; that so soon as the said cattle were delivered by said O'Neal to said Dawson he, the said Dawson, drove said cattle out some six or seven miles from said Will's Point in a northwest direction and returned to said Will's Point for the ostensible purpose then to sign & execute the various papers contemplated by said agreements in carrying out and consum-ating the same.

That thereupon, for the first time, said O'Neal disputed something over eight thousand seven hundred dollars of his said indebtedness to your orators, thereby reducing your orators' said claim,
101 in prorating the proceeds of said cattle with said bank, to nine thousand three hundred & seventeen & $\frac{22}{100}$ dollars; that thereupon said O'Neal executed & delivered to said Dawson & bill of sale for said cattle as contemplated by said agreements, which is now in the possession and under the control of said O'Neal, Dawson, & said bank, and they are hereby notified to produce the same upon the trial & hearing hereof that it may be used as evidence. Said Dawson thereupon executed his note to your orators & said bank for the said sum of $19,032.00, stipulating that it was to be paid according to the terms of the written contract by & between said bank, your orators, & said Dawson, dated March 20th, 1880, the same hereinbefore described, and your orators & the said bank thereupon executed to said O'Neil a receipt for the amount of the value of the cattle so as aforesaid turned over by him to said Dawson; that all of these papers were executed & delivered by acts done toward carrying out and consum-ating the said agreements hereinbefore described and hereto attached as Exhibits C & D; but your orators represent and show that the said O'Neal then failed & refused to in any way *to* secure the said disputed amount of your orators' claim against him,
102 to wit, said sum of $8,700.00, and failed and refused to carry out & consum-ate said agreements, and thereupon the parties to said agreements were remitted to their original rights and liens, and the said agreements thereby became abrogated & were thereafter of no force or effect, for that said agreements were executed at the same time and formed parts & parcels of the same transaction, and each and every stipulation therein was dependent upon the carrying out & consum-ating each & every other stipulation contained in said agreement; and from and after the refusal of the said O'Neal to secure said disputed amount of your orators' claim, as stipulated in said agreements, your orators have ever treated said agreements as abrogated, abandoned, & of no force or effect.

III.

Your orators would further represent and charge that at & prior to the making of said agreement dated March 20th, 1880, and hereto attached as Exhibit- C & D, the said John O'Neal, John Dawson, & the said City National Bank combined and confederated together for the purpose and in order to cheat, wrong, and defraud your orators, for that at and prior to the execution of said agreement the said parties were at the city of Fort Worth consulting together about
103 said matter and had partly prepared said agreements when they sought Wm. Hunter, one of your orators' agents, and proposed

to him to enter into said agreement. Said agent immediately took the advice of your orators' attorney, A. T. Watts, who advised against making said agreement, upon the ground that the lien of your orators upon said O N stock was the prior lien, and that he was informed that there was enough cattle in said brand & included in said bill of sale to pay the claim of your orators; that upon this advice your orators refused to enter into said agreement and so stated to said O'Neal, Dawson, & said bank; whereupon said bank, Dawson, & O'Neal had a private conference & consultation, which was not heard by your orators, after which the said O'Neal, in the presence & hearing of the other parties, represented to your orators that he then owned a large number of cattle, then running in the range in Van Zandt county, which was included in the liens of the said bank, but were not included in the bill of sale to your orators—that is to say, a large number of cattle not in the O N mark or brand, but in the marks and brands described in the written liens of the said bank; that such cattle were quite or very nearly sufficient in value to pay the said O'Neal's indebtedness to the said bank, and that if your orators would enter into the said agreements the said cattle should be embraced therein and included in the delivery to the said Dawson; that these representations of the said O'Neal were then & there accepted & adopted by said bank and urged by it as a reason & an inducement for your orators entering into *to* said agreement; that your orators were not informed of the number, value, or condition of said cattle not in the O N mark & brand and which it was claimed were included in the said written lien of the said bank, and knew nothing of the facts with respect thereto, except as represented by said Oneal and said bank as aforesaid.

104

That your orators, whol-y relying upon said representations and believing the same to be true, were thereby induced to and did then & there enter into said agreement with said O'Neal, Dawson, and said bank. Now, your orators represent that said representations of the said O'Neal and said bank made as aforesaid were entirely false, fraudulent, and untrue, and were known so to be by the said parties at the time the same were so made by them; that said false representations aforesaid were knowingly made by the said parties for the purpose & with the intent to induce your orators to enter into said agreements, to their great injury & loss, for that your orators represent that, in truth and in fact, the said O'Neal did not then have a large number of cattle then running in the range in said Van Zandt county or elsewhere that was included in the said liens to the said bank other than said O N stock of cattle, which was included in said bill of sale to your orators, nor did he then own any such cattle, except a very few head, then not exceeding in value five hundred dollars, nor did he then own any cattle whatever other than said O N stock, save and except as above stated and some ten cows & calves, of little value & mostly exempt from execution. Said Oneal & said bank well knew such to be the facts at & before the time such false and fraudulent representations were made by them

105

to your orators as aforesaid. Your orators further show & represent that said O'Neal, the better to enable him to perpetuate his said fraud upon your orators & for the purpose & with the intent to cheat, wrong, & defraud them, had, up to & at the time of entering into said agreement, *had* frequently stated and acknowledged to your orators that the sum of sixteen thousand three hundred
106 dollars of their claim against him was correct, and that he owed that amount to your orators, as shown by his own books; and at & before the time of the making of the said agreement said O'Neal stated to your orator- that he was not satisfied with some of the items of their accounts going to make up the difference between said sum of $16,300, admitted by him to be correct, & the amount claimed to be owing & correct by your orator-, and that he would, within a few days after said agreements were executed, meet your orators in the city of Dallas, and then they would examine all the items that he claimed were not correct, and that they would agree upon & fix the amount of said indebtedness; that said O'Neal failed & refused to meet your orators and make the said settlement, but that he postponed the matter from time to time until after the said cattle were delivered to the said Dawson as aforesaid; then he for the first time after his acknowledgements & admissions as aforesaid disputed about $8,700 of your orators' claim against him, & thus by his deceit & fraud reduced your orators' claim on prorating with said bank the proceeds of said cattle to about $9,300.

Your orators further represent that said cattle were so as
107 aforesaid delivered by the said O'Neal to the said Dawson on Saturday, & were on said day driven by the said Dawson out some six or seven miles northwest from Will's Point; that he then returned to said Will's Point in the afternoon of that day, and immediately upon his said return the said bank, Dawson, O'Neal, & your orators commenced upon the settlement & to prepare the papers contemplated by said agreement so that the same could be executed; that then, for the first time, said Oneal disputed the said amount of $8,700 of your orators' claim, & then & there represented that he owned a large number of cattle running on the range in said county which was of more than sufficient value to pay said disputed amount of $8,700, and that the same could be gathered in a few days; that after the preparation and execution of the various papers by the parties, as hereinbefore set forth, & when your orators' attorney commanded the preparation of a deed of trust from said O'Neal to your orators to secure them in said disputed amount of $8,700, and when he came to the discription of the property upon which the lien was to be given, he called upon said O'Neal for the description
108 thereof, that he might insert the same in said deed of trust. Said O'Neal then replied & stated that it was impossible for him to give the description; that he would have to obtain the same from the record then at the town of Canton, some fifteen miles distant from & southeast of the said town of Will's Point. The said Oneal then & there proposed to pay your orators in cash something over four thousand dollars in addition to the amount of your orators' claim assumed by the said Dawson, and then & there insisted

upon said proposition being submitted by the agent of your orators to your orators, who were then in the city of St. Louis, State of Missouri. The said O'Neal then well knew that said agent could get no reply from your orators to their dispatch submitting the same before the following Monday, and he then & there stated that if your orators would not accept said proposition that he would meet them & arbitrate & fix the amount of said indebtedness at said Will's Point on the following Wednesday & then & there either pay the same in money or secure the same to your orators' satisfaction, as contemplated by said agreement. Now, during all this time said Dawson was very urgent & asking that the papers which he was to
109 sign should be prepared, and he signed said papers and left Will's Point well knowing at the time that said O'Neal had not consummated & completed his part of said agreement, and that said amount of $8,700 of your orators' claim was disputed by said O'Neal & had not been secured by him; that your orators rejected said proposition & met said O'Neal at Will's Point on the following Wednesday, & the said arbitration was postponed until the following Saturday on account of the absence of material witnesses, whey they again met at said Will's Point, and the said O'Neal then & there refused to go into said arbitration, & also then & there refused to secure said disputed amount of $8,700 of your orators' claim against him, and said O'Neal then & there stated & said to your orators that he had no property with which to secure said amount, and that he could not secure the same; that he only owned a very few cattle besides those he had delivered to said Dawson, and that he had sold them to the said City National Bank in payment of the balance he owed the same; also then & there further saying & stating to your orators that all of his property was mortgaged for more, much more, than the value thereof, and that much of
110 it was doubtful title and then in litigation, and asked your orators not to press him with a suit, as he was then insolvent, & that it would expose & ruin him, to all of which your orators replied that they would take such course as they thought best to protect their rights. Afterwards and on the same day said O'Neal asked your orators, as the mearest pretence, when said amount so as aforesaid disputed by him would become due, to which your orators replied that when the same was fixed by suit, arbitration, or otherwise it would be due & payable, to which said O'Neal replied that his understanding of the agreement was that said amount would be due & payable the 1st day of October, 1880, but said O'Neal did not then in any way modify what he had already stated to your orators as to his inability to secure them, nor did he then propose to secure said amount in any was. Now, your orators represent the truth to be that said O'Neal was at the time of the delivery of said cattle to said Dawson hopelessly insolvent; that, in fact & in truth, he owned no other cattle except about three hundred head of the said O N stock, already included in your orators' bill of sale, and those not exceeding in value $3,000. Said O'Neal well knew the facts,
111 but falsely and fraudulently made the representations & statements aforesaid in furtherance of the combination so as

aforesaid existing between him, said bank, & said Dawson to cheat & defraud your orators; that said representations & acts of the said O'Neal were all made & done with the design & for the purpose of delaying your orators so as to enable said Dawson to hastily drive said cattle so as aforesaid delivered to him by said O'Neal beyond the limits of the State of Texas, which he, the said Dawson, in pursuance of said combination, was then proceeding to do, all with the design & for the purpose of defrauding your orators out of their just rights. Your orators relied upon the said representations of the said O'Neal & believed the same were true until the said O'Neal, as hereinbefore stated, informed your orators to the contrary. Your orators further represent that all the cattle delivered by the said O'Neal, as hereinbefore stated, belonged to the said O N stock and were included in the bill of sale to your orators, and that he did not own or deliver to said Dawson any cattle in the other marks and brands included in the written lien of the said bank.

Your orators further represent that, to wit, the — day of
112 ——, A. D. 1880, long after the execution of the bill of sale to your orators and the record of the same in Van Zandt county, said O'Neal, in violation of law, without the knowledge or consent of your orators, clandestinely gathered and shipped to Chicago, State of Illinois, ninety-six head of beeves in the said O N mark and brand and included in said bill of sale to your orators, & there sold the same for about $3,000 and received the money therefore and converted the same to his own use, all of which tends to show the animus & spirit that characterize *the* all of the acts of the said Oneal in the premises; wherefore your orators say & charge that, on account of the deceit and fraud of the said O'Neal, said bank, & said Dawson, the said agreements dated March 20th, 1880, & hereto attached as Exhibit- C & D were and are null & void and of no binding force or effect.

IV.

Your orators would further represent that the said John Dawson, notwithstanding he well knew at the time said agreement had not been carried out by the said O'Neal as hereinbefore shown & stated, took charge of the said cattle so as aforesaid delivered to him by said O'Neal and was hastily driving them beyond the limits of the
113 State of Texas, and while thus engaged, in the temporary absence of said H. E. McCullough, the said Dawson sold one hundred beeves & four cows out of said herd, all in the O N mark & brand & included in your orators' bill of sale, for which he received the sum of two thousand & sixty dollars and only accounted to said McCullough for one thousand eight — & forty-two dollars, which last-mentioned amount was paid over to your orators and which they now hold subject to the order of the court; that two hundred & eighteen dollars of said amount the said Dawson, in utter disregard of the terms of the written agreement by & between him & said bank & your orators hereinbefore described, retained & converted the same to his own use & refused to pay the same over as he was bound to do; that also during the time aforesaid the said

Dawson, also in disregard of said agreement & the rights of your orators & also in the temporary absence of said McCullough, exchanged a large number *number* of said cattle in the O N mark & brand & included in your orators' bill of sale to some person to your orators unknown for other cattle in different marks & brands, and in which the said Dawson received as the
114 difference in value about thirty head of yearlings of the value of, to wit, $300, and was preparing & attempting to dispose of the same without accounting to the said McCullough therefor at the time said stock of cattle were seized by the sheriff of Montague county, Texas, by virtue of the writ of sequestration sued out by your orators; that for a full description of the cattle so seized & which were included in your orators' said bill of sale reference is here made to their original bill herein filed & the said writ of sequestration & return of the sheriff thereon, and also the replevy bond of the said Dawson, both of which are on file herein, and that the same is here referred to & made part hereof; that said cattle were at the replevy of the same sold by the said Dawson & said bank for the sum of, to wit, sixteen thousand five hundred dollars, and that they received the said money therefor and now hold & detain the same; that the other portions of said O N stock of cattle were delivered to the said Dawson by the said O'Neal. The same, also included in the bill of sale to your orators, is fully described in the return of the sheriff of Van Zandt county, endorsed upon the supplemental writ of sequestration on file herein & which is here referred to & made part hereof.

115 V.

Wherefore your orators pray your honors for a decree against the said John A. O'Neal for the full amount of their said debt against him, and also a decree against the said O'Neal, said Dawson, & said City National Bank of Fort Worth foreclosing the said lien of your orators upon the said cattle hereinbefore fully described, that the same be sold under decree of this court, and that the proceeds be applied to the payment of your orators' said debt.

And in the event your orators are mistaken as to their remedy herein, then they pray your honors for a decree against said John Dawson and said City National Bank of Fort Worth for the amount of money coming to them from the proceeds of said cattle under and by virtue of said agreement.

And generally for such other & further relief as the nature of their case may require.

And may it please your honors to grant unto your orators a writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to the said City National Bank of Fort Worth, made defendant herein, commanding
116 the same, on a day certain therein to be named and under a certain penalty, to be and appear in this honorable court, then and there, together with the defendants, John A. Oneal and John Dawson, each and all to answer specifically all and singular the

premises—said answers are not required to be under oath—and each and all of said defendants be required to stand to, perform, and abide such further order, direction, and decree as may be made against them, &c.

And your orators, as in duty bound, will ever pray, &c.

(Signed) SAWNIE ROBERTSON &
A. T. WATTS,
Solicitors for Complainants.

(Endorsed:) No. 21. U. S. cir. c't. Chancery. Hunter, Evans & Co. *vs.* Oneal & Dawson. Amended bill. Filed Sept. 30, 1881. A. J. Houston, clerk.

We accept service of subpœna on the within bill as if made this date, Sept. 30, 1881.

THE FIRST NATIONAL BANK OF FT. WORTH,
By WELLBORN, LEAKE & HENRY, *Solicitors.*

EXHIBIT A to Original Bill.

STATE OF ILLINOIS,
County of St. Clair, } *ss:*

Know all men by these presents that I, John A. Oneal, of the county of Van Zandt, State of Texas, for and in consideration
117 of the sum of twenty-two thousand dollars, the receipt of which is hereby acknowledged, have sold and do hereby grant, bargain, and sell to Rob't D. Hunter, A. G. Evans, and M. P. Buel, composing the firm of Hunter, Evans & Company, of the State of Missouri, all my right, title, and interest in my home stock of cattle, consisting of beeves, three-year-olds, two-year-olds, cows, bulls, yearlings, and calves, marked and branded as follows: Branded O N on hip and side and marked with swallow fork in each ear, and various other marks:

To have and to hold for their use, and I hereby agree to warrant and defend the title to the same against any and all claimants whatsoever.

In testimony whereof witness my hand and seal this 20th day of August, A. D. 1879.

JNO. A. ONEAL. [SEAL.]

Witness:
J. B. SAMPSEL.
F. W. FLATO, JR.

STATE OF ILLINOIS,
County of St. Clair, } *ss:*

This is to certify that on August 21st, 1879, personally appeared before me, a notary public for said State & county, J. B. F. Sampsel & F. W. Flato, Jr., known to me to be the persons whose names are subscribed to the foregoing instrument as witnesses, and acknowl-

edged the signature of Jno. A. Oneal as genuine, and that
118 they saw the said Oneal subscribe his name to said instrument for the purposes therein specified.

Witness my hand & seal this 21st day of August, 1879.

G. B. FOSTER, [SEAL.]
Notary Public.

THE STATE OF TEXAS, *Harrison County:*

Personally appeared before me, the undersigned authority, on this the 26th day of August, A. D. 1879, J. B. F. Sampsell, who, being by me duly sworn, upon his oath says that he saw Jno. A. O'Neal subscribe the within and foregoing instrument of writing on the day and date thereof, and that he, the said J. B. F. Sampsell, signed the same as a witness at the request of said Jno. A. O'Neal.

In testimony whereof I hereto sign my name and affix my notarial seal on this the 26th day of August, A. D. 1879.

[SEAL.] ROLAT HANSEN,
Notary Public, Harrison County, Texas.

THE STATE OF TEXAS, *County of Van Zandt:*

I, T. J. Foster, clerk of the county court of Van Zandt county, do hereby certify that the annexed bill of sale or instrument of writing and certificates of authentication are duly recorded in my office in Record Book No. 2, page- 622 & 623.

To certify which I hereto sign my name and affix the seal
119 of my office, at Canton, this 28 day of August, 1879.

[SEAL.] T. J. FOSTER,
Clerk C. C., V. Z. Co., Texas.

THE STATE OF TEXAS, *Kaufman County:*

I, Henry Erwin, clerk of the county court in and for said county, do hereby certify that the foregoing and hereto attached instrument of writing, with its certificate of authentication, was filed for record in my office the 13th day of November, A. D. 1879, at 11 o'clock a. m., and duly recorded on the 14th day of November, A. D. 1879, at 8½ o'clock a. m., in Book Z, on pages 498 & '99 of the records, deeds, &c., of said county.

Given under my hand and the seal of said court this 14th day of November, A. D. 1879.

HENRY ERWIN,
County Clerk, Kaufman County.
A. J. HINDMAN, *Deputy.*

Certificate of Record.

STATE OF TEXAS, }
County of Rains, } *ss:*

I, Thos. M. Allred, clerk of the county court in and for said county, do hereby certify that the foregoing instrument of writing was duly

and correctly recorded in my office on the 25th day of November, 1879, at 4 o'clock p. m., in Record of Deeds of Trust, volume 1, pages 1 & 2.

In witness whereof I hereunto sign my name and affix the
120 seal of said court, at office, in Emory, this 25 day November, 1879.

THOS. M. ALLRED,
Clerk of County Court, Rains Co., Texas.

Certificate of Record.

THE STATE OF TEXAS, *County of Van Zandt:*

I, T. J. Foster, clerk of the county court of Van Zandt county, do hereby certify that the annexed bill of sale or instrument of writing are duly recorded in my office in Record Book Chattle Mortgages, page 10.

To certify which I hereto sign my name and affix the seal of my office, at Canton, this 17 day of February, 1880.

T. J. FOSTER,
Clerk C. C., V. Z. Co., Texas.

STATE OF ILLINOIS, *St. Clair County:*

Before me, Samuel Bucknell, a notary public in and for the county of St. Clair and State of Illinois, on this day personally appeared J. B. F. Sampsel, known to me to be the person whose name is subscribed as a witness to the foregoing instrument of writing, and, after being duly sworn by me, stated on oath that he saw John A. O'Neal, the grantor or person who executed the foregoing instrument, subscribe the same on the 21st day of August, 1879, and that he (J. B. F. Sampsel) had signed the same as a witness at the request of said John A. O'Neal.

121 Given under my hand & seal of office this the 12th day of February, A. D. 1880.

SAMUEL BUCKNELL, [SEAL.]
Notary Public in and for the
County of St. Clair & State of Illinois.

(Endorsed:) Jno. A. O'Neal to Hunter, Evans & Co. Bill of sale. Filed for record August 28, A. D. 1879, at 1 o'clock p. m., & duly recorded August 28, A. D. 1879, in Book V, pages 622 & 623. T. J. Foster, C. C. C., V. Z. Co. Filed for record Nov. 13th, 1879, at 11 o'clock a. m. Henry Erwin, Co. cl'k K. Co., by W. J. Hindman, deputy.

(Endorsed:) #21. U. S. cir. c't. Chancery. Hunter, Evans & Co. *vs.* Oneal & Dawson. Exhibit A to original bill. Filed Sep. 30, 1881. A. J. Houston, clerk. Filed in this office for record November 25th, A. D. 1879, at 4 o'clock p. m. Thos. M. Allred, clerk Co. c't, Rains Co., Texas. Filed for record February 17, A. D. 1880, at 5 o'clock p. m. & recorded the same time in Book of Chattle Mortgages, page 10. T. J. Foster, C. C. C., V. Z. Co.

EXHIBIT "B" to Original Bill.

Copy.

EAST ST. LOUIS, ILL., *Aug.* 20, 1879.

It is hereby agreed & understood that the bill of sale of even date herewith given by Jno. O'Neal, of the State of Texas, for his home stock of cattle, is made to us in the payment of three promissory notes, one dated June 20, 1879, for the thousand dollars,
122 due Sept. 22, 1879, and two of date August 22, for eleven thousand dollars each, due Oct. 2 & Oct. 22, respectively, and such other balances as may be due by him, as evidenced on our books at our settlement.

Now if said notes & balances are paid the aforesaid bill of sale is null and void; otherwise to be in full force & effect.

HUNTER, EVANS & CO. [SEAL.]

Witness:
J. B. F. SAMPSEL.

(Endorsed:) #21. U. S. cir. c't. Ch'y. Hunter Evans & Co. *vs.* Oneal & Dawson. Exhibit B to original bill. Filed Sep. 30, 1881. A. J. Houston, clerk.

EXHIBIT C to Original Bill.

THE STATE OF TEXAS, *County of Tarrant:*

Whereas Hunter, Evans & Co., of East St. Louis, Illinois, and the City National Bank of Ft. Worth, Texas, have each of them liens upon certain cattle described in said written liens to secure the payment of certain monies due the said Hunter, Evans & Co. & the said City National Bank by John A. Oneal;

And whereas the said John A. Oneal has sold said cattle mentioned in said liens to John Dawson:

Now, therefore, this agreement witnesseth: That the said Hunter, Evans & Co. & the City National Bank agree to said sale, provided the said John A. Oneal shall upon the delivery of said cattle
123 to said Dawson surrender to the said Hunter, Evans & Co. & the City National Bank the proceeds of said sale, to wit, the paper of Dawson, together with the contract of sale, and the said Hunter, Evans & Co. and the City National Bank agree to receive the same in discharge, payment, and satisfaction of their said claim, provided said paper or the proceeds of said cattle amount to a sum equal to the amount of their debts—that is, the total amount of indebtedness from said Oneal to the said Hunter, Evans & Co. & the City National Bank; but should the paper, liens, &c., arising from the sale of said cattle by said Oneal to said Dawson be less than the amount of said debts, then the said Hunter, Evans & Co. & the said City National Bank agree to receive the same & credit said paper & proceeds upon the debts of said Oneal by prorating the same according to the amount received & according to the respective debts of

them, the said Hunter, Evans & Co. and the City National Bank, and the deficiency, if any there be, between the sale of said cattle & the amount of said indebtedness the said Oneal hereby obligates & binds himself in lieu thereof to either, at the option of said Oneal, to pay in money or to pay in his, said Oneal's, note, well & suffi-
124 ciently secured to the satisfaction of them, the said Hunter, Evans & Co. & the City National Bank, by giving deeds of trust or such other liens upon property, real or personal, in Van Zandt county as shall be of value sufficient to pay such deficiency, if any there be.

And it is further agreed by & between the said Hunter, Evans & Co. & the said City National Bank & the said Oneal that should there arise any difference or trouble about the amount of indebtedness of the said Oneal to said Hunter, Evans & Co. or the said City National Bank then the amount agreed upon to be due between the parties shall be adjusted, satisfied, and discharged as aforesaid & the amount in dispute shall be secured by said Oneal as aforesaid, & when the parties to said disputed amount agree or when the same shall be determined by suit, arbitration, or otherwise then said amount to be paid as heretofore stipulated, to wit, from the proceeds of said sale or from the security furnished by said Oneal.

And it is further agreed that should there be a deficiency between the amount of said sale of cattle by said Oneal to said Dawson & the amount of said Oneal's indebtedness as aforesaid, such deficiency, after being secured as heretofore provided, shall be carried,
125 owned, & held by & between the said Hunter, Evans & Co. & the said City National Bank according to their respective claims, & the collection arising therefrom to be prorated as heretofore provided for on the claims of them, the said Hunter, Evans & Co. & the said City National Bank.

It is further understood & agreed by & between the parties hereto that should this agreement from any cause whatever fail to be carried out & consum-ated then no statement or recital herein shall be construed to be an abandonment of any right, lien, or security held by any of the parties hereto.

It is further agreed that this instrument shall be deposited with the City National Bank of Ft. Worth, Texas, & county of Tarrant, & by them held & safely kept, each party hereto or their att'ys at all times having access to the same, & each party hereto entitled, upon demand, to a copy hereof.

It is further agreed that should there be a deficiency, as heretofore referred to, then the said Oneal agrees to secure said deficiency in manner as aforesaid, by liens upon property owned by said Oneal, real or personal, & such deficiency to bear interest at the rate of twelve per cent. per annum from date & to mature on or before the 1st day of January, 1881; that the deficiency to be secured &
126 delivered as above provided at the time said cattle are delivered over to said John Dawson.

In testimony whereof we, the said Hunter, Evans & Co., the City National Bank, & John A. Oneal, hereto set our hands & scrawls for seal- this 20th day of March, 1880.

JOHN A. ONEAL. [SEAL.]
CITY NATIONAL BANK OF
FT. WORTH, TEXAS, [SEAL.]
By A. M. BRITTON, *V. P.*
HUNTER, EVANS & CO., [SEAL.]
By W. HUNTER.

Attest: J. C. KEARBY.
A. T. WATTS.
ROB'T McCART.

(Endorsed:) #21. Cir. c't. Ch'y. Hunter, Evans & Co. *vs.* Oneal & Dawson. Exhibit C to original bill. Filed Sept. 30, 1881. A. J. Houston, clerk.

THE STATE OF TEXAS, *Tarrant County:*

I, W. E. Kneeland, a notary public in and for said county, do hereby certify that the following 6 pages of writing *is* a true, *verbating*, and examined copy of the original instrument this day exhibited to me.

Witness my hand and official seal this the 14th day of May, A. D. 1880.

W. E. KNEELAND, [SEAL.]
Notary Public.

EXHIBIT "D" to Original Bill.

Whereas John Oneal, of Will's Point, Van Zandt county, Texas, is indebted to Hunter, Evans & Co., of East St. Louis and State of Illinois, and also the City National Bank of Ft. Worth, Texas,
127 in a large amount; and whereas the said Hunter, Evans & Co. and the said City National Bank of Ft. Worth have liens upon the home stock of cattle to secure said indebtedness of the said John Oneal; and whereas the said John Oneal has this — entered into a written contract with one John Dawson, of Tarrant county, Texas, for the sale and delivery of the said cattle belonging to the said John Oneal, on the terms and conditions as shown by a written contract executed and delivered between the said John Dawson and the said John Oneal, and by the terms of said contract the said John Dawson is to assume the payments of the said John Oneal's indebtedness to the said Hunter, Evans & Co. and the said City National Bank of Ft. Worth, provided the said John Oneal shall deliver to the said John Dawson — sufficient amount of cattle, as per contract price of said cattle as shown by the written agreement between the said Dawson & the said Oneal, to pay off said indebtedness :

In the event that the cattle sold and delivered by the said Oneal to the said Dawson shall not be sufficient to pay off & discharge the full amount of said indebtedness, then the said Dawson assumes &

binds himself to pay off & discharge the said indebtedness
128 *pro rata* to the extent of the cattle received, which payment shall be made by the said Dawson to the said Hunter, Evans & Co. & to the said City National Bank of Ft. Worth by the first day of October, 1880.

It is further agreed that this sale is made subject to the liens of the said Hunter, Evans & Co. & the said City National Bank of Ft. Worth, and that the said Dawson holds said cattle in trust for the said Hunter, Evans & Co. & the said City National Bank of Ft. Worth, as stipulated in this agreement.

It is further agreed that the said Hunter, Evans & Co. & the City National Bank of Ft. Worth shall together select a man to accompany the said Dawson in driving said cattle from Texas to any point said cattle may be sold, and the men so selected shall have the legal possession of said cattle, and he shall receive the proceeds of the sale of said cattle from any & all purchasers of said cattle to the extent & amount of the said indebtedness assumed by the said Dawson.

In the event that the said Hunter, Evans & Co. & the said City National Bank of Ft. Worth, Texas, cannot agree upon the person to accompany said cattle, then the said Hunter, Evans & Co. & the City National Bank of Ft. Worth shall each one select a per-
129 son, and the two persons so selected then shall have the joint possession of said cattle, and shall jointly receive the proceeds of the sale of said cattle.

It is further agreed that should the said Dawson not sell said cattle by the first of October, 1880, then the said Hunter, Evans & Co. & the said City National Bank of Ft. Worth shall have the power & authority to take possession of said cattle and dispose of the same and apply the proceeds thereof *pro rata* to their said indebtedness.

It is further agreed that the said Dawson shall have the handling and control and disposition of said cattle, subject to the stipulation heretofore expressed.

In witness whereof we have, this 20th day of March, 1880, set our hands & seals to this agreement.

JOHN M. DAWSON. [SEAL.]
HUNTER, EVANS & CO., [SEAL.]
By W. HUNTER.
CITY NATIONAL BANK, [SEAL.]
By A. M. BRITTON, *V. P.*

Attest: A. T. WATTS.
ROB'T McCART.

(Endorsed:) Hunter, Evans & Co. *vs.* Oneal & Dawson. Exhibit D to original bill.

1879.			
Feb. 17.	To cash		1,500
M'ch 1.	" balance		260 19
			1,760 19
M'ch 6.	To cash, d'ft		200 00
20.	" accepted 90-d'y d'ft		3,141
28.	" cash, "		1,000
			4,341
Apr. 1.	To balance		3,436 31
4.	" accepted due May 1, '79		204 57
8.	" cash, d'ft		1,300
14.	" accep'ce due June 1, '79		3,659 85
18.	" do. " May 1, '1		2,525
May 6.	" do. " June 15, '1		1,787 67
9.	" do. " July 4th		3,075
10.	" do. " June 5th		530
13.	" cash, d'ft		1,000
"	" accept'ce due June 9th		1,305 44
14.	" do. " July 11th		2,113 60
15.	" do. " June 24th		408
"	" cash p'd shipper		5
17.	" " telegrams		3 25
21.	" acceptance due June 4th		1,015
"	" do. " June 5th		1,500
23.	" do. " June 14th		3,053 25
26.	" cash, d'ft		1,000
27.	" " "		750
29.	" " 2 "	{ 1,000 / 500 }	1,500
			30,171 94

1879.			
Feb. 26.	By pro. 56 cattle		1,730 19
"	" rebate		30
			1,760 19
M'ch 1.	By balance		260 19
31.	" pro. 31 cattle		644 50
	Balance		3,436 31
			4,341
Apr. 9.	By pro. 38 cattle		1,155 90
"	" " 104 hogs		602 52
May 5.	" " error		03
15.	" pro. 39 cattle		1,027 30
26.	" " 43 " M. & O.		756 35
27.	" " 43 "		748 13
28.	" " 23 " O. & J.		428 08
31.	" " 41 "		856 02
	Balance		24,597 61
			30,171 94

June	2.	To balance		24,597	61		
	3.	" cash, d'ft		700			
	4.	" Oneal & Jones		29	40		
	9.	" ex'ge on Chi.		1	55		
	"	" cash p'd shippers		3			
	10.	" accept'ce due June 10th		4,171	11		
	"	" cash, d'ft		4,135	46		
	11.	" " "		700			
	12.	" " "		1,162	72		
	14.	" " ex'ge		5	00		
	17.	" " d'ft		3,213	96		
	"	" " shipper		10			
		Forward		38,729	81		

131

June	—.	To am't bro't for'd		38,729	81		
	24.	" cash, d'ft		2,500			
	"	" do. 2 d'ft	900 1,150	2,050			
	26.	" do. "		1,000			
	27.	" accept'ce due July 28th		2,708	02		
	"	" cash, d'ft		2,681	48		
	28.	" shipper		2			
	"	" accept'ce due July 27th		1,525	50		
	30.	" cash, d'ft		1,800			
	"	" " "		2,500			
				55,496	81		

June	4.	By pro.	42 cattle			743	84
	"	" "	63 "	O. & J.		779	93
	11.	" "	40 "	do.		908	92
	12.	" "	20 "	Moore		337	45
	"	" "	21 "	Bowland		280	75
	"	" "	20 "	O. & M.		489	37
	"	" "	42 "	O. N.		657	
	"	" "	20 "	"		397	60
	"	" "	20 "	M. & B.		330	62
	"	" "	110 "	O. N.		1,843	36
	17.	" "	142 "			2,474	98
	"	" "	140 "			2,763	22
		Forward				12,007	04

June	—.	By am't bro't for'd				12,007	04
	18.	" pro.	19 cattle			397	45
	"	" "	63 "			1,090	23
	20.	" bills rec., y'r note, less int.				9,908	34
	"	" do.	"			9,825	
	"	" do.	"			9,741	67
	23.	" pro.	78 cattle			1,421	77
	24.	" "	44 "	O. & J.		725	78
	26.	" "	63 "			1,155	11
	28.	" "	169 "			3,585	12
		Balance				5,639	30
						55,496	81

Exhibit E to Original Bill—Continued.

1879.						1879.					
July	1.	To balance		5,639	30	July	3.	By 63 cat., O. & J.	1,324	98
	3.	" accept'ce due Aug. 3d		4,004	18			" 155 "	2,563	41
	"	" cash, d'ft		1,909	50			" 21 "	335	95
	5.	" " "		1,000				" 129 "	2,374	21
	7.	" " "		1,410			7.	" 66 "	1,052	44
	"	" " "		100	90		9.	" 125 " O. & J.	2,165	50
	8.	" " O. & D. %		111	50			" 155 "	2,531	18
	"	" " "		1,015				" 45 " O. & M.	680	99
	9.	" " shipper		5			10.	" 88 "	1,380	59
	10.	" "		2,500			11.	" 75 "	970	
	12.	" "		970			15.	" 236 "	3,716	43
	"	" accept'ce due July 18th		1,100			18.	" 24 " O. & C.	246	78
	14.	" cash, d'ft		4,845	01			" 147 "	2,373	64
	15.	" " "		221	85			" 88 " O. & J.	1,539	77
		" "		2,600				" 221 " "	3,192	89
		" "		3,340	46		21.	" 103 " "	2,209	78
	18.	" "		520			24.	" 85 " "	990	87
	19.	" "		361			28.	" error bills pay.	3	
	22.	" "		2,739			30.	" pro. 40 cattle	597	
	23.	" "		50				" " 105 " O. & J.	1,682	30
	24.	" "		200				" " 128 " O. & M.	2,150	02
	"	" " shipper		2				" " 64 " O. & J.	1,059	50
	25.	" " d'ft		886	50			Balance forward	2,736	97
	"	" " "		2,347						
				37,878	20				37,878	20
Aug.	1.	To balance		2,736	97					

Aug.	1.	To balance for'd		2,736	97		
	5.	" cash, tel.		1			
	8.	" " d'ft		8,898	25		
	9.	" " "		1,005			
		" accept'ce due Sept. 4th		7,000			
	11.	" cash, shipper		14	50		
	18.	" " d'ft		400			
	19.	" " "		2,500			
	20.	" bills rec. & int. (your 2 notes)	10,000 10,000 50	20,000	50		
		" cash, d'ft		2,500			
	28.	" " "		1,500			
	29.	" " "		1,500			
				48,105	72		

Aug.	4.	By pro. 342 cat., O. & J.		4,915	51		
	11.	" " 313 " "		4,998	24		
		" " 269 " "		3,751	57		
	12.	" " 41 " O. & M.		715	72		
	13.	" " 111 "		2,083	87		
	19.	" " 44 "		746	32		
	20.	" y'r note, less int.		10,868	60		
		" " "		10,807	50		
	21.	" pro. 42 cattle		849	01		
		" " 67 " O. & J.		949	39		
	25.	" " 24 " Moore		263	25		
	28.	" " 24 " O. & M.		261	45		
		" " 111 "		1,659	73		
	29.	" " 26 " O. & D.		124	15		
		" " 24 " O. & J.		257	15		
	30.	" rebate, 227 cars		2,270			
		Balance		2,584	26		
				48,105	72		

Sept.	1.	To balance		2,584	26		
	"	" cash, McMiller		48			
	2.	" " d'ft		5,259	70		
		" " "		1,774	95		
	4.	" " "		325			
		" " "		124	15		
	5.	" accept'ce due 10th		17,251	15		
	6.	" cash, tel.		1	80		
	16.	" hauling cripple		1	50		
	17.	" accept'ce due 28th		6,724	41		
		" cash, d'ft		6,701	24		

Sept.	1.	By pro. 201 cattle		3,894	07		
	2.	" " 131 cattle		2,089	92		
		" " 133 "		2,236	91		
		" " 22 "		258	21		
		" " 48 " Moore		547	16		
	5.	" " 23 "		280	99		
	10.	" " 46 "		687	75		
	12.	" " 280 "		6,216	37		
		" " 292 "		4,653	60		
	16.	" " 253 "		4,586	89		
	17.	" N. Y. ex'ge		6,641	36		

Exhibit E to Original Bill—Continued.

1879.				
Sept.	20.	" bills rec., y'r note	10,000	
	26.	" loss on 120 cat., N. Y.	665	99
		" cash p'd shipper	16	
	29.	" " d'ft	8,002	35
	30.	" interest	50	06
			59,530	56
Oct.	1.	To balance	27,159	91
Oct.	1.	To balance for'd	27,159	91
	3.	" cash, d'ft	277	42
133	4.	" accept'ce due 4th	7,113	14
		" cash p'd, y'r note	11,000	
	6.	" " shipper	2	
	7.	" " "	10	
	13.	" " d'ft	2,000	
	15.	" " shipper	10	
	18.	" " d'ft	2,864	63
	21.	" " 3 d'fts	5,292	08
		" " shipper	20	
	23.	" " d'ft	500	
	24.	" " interest	196	08
	"	" cash p'd, y'r note	11,000	
	"	" " tel.	1	50
	"	" " d'ft	5,443	09
	27.	" " "	1,006	34
	28.	" " "	600	
			74,496	19

1879.				
Sept.	12.	" pro. 22 cat.	277	42
		Balance	27,159	91
			59,530	56
Oct.	7.	By pro. 400 cat.	7,848	52
	"	" " 200 "	3,667	64
	9.	" " 183 "	3,377	45
	10.	" " 1 "	15	
	13.	" Byrd & W.	1,126	97
	15.	" pro. 340 cat.	5,945	70
	17.	" " 164 "	3,156	31
	18.	" " 83 "	1,525	03
	21.	" " 175 "	3,640	83
	"	" " 83 "	1,534	82
	"	" " 41 " Mason	942	35
	"	" " 35 " Atkinsen	468	68
	22.	" " 168 "	3,056	63
		" " 1 crip.	11	
		" " 16 cat., O. & Co.	236	52
		" " 176 "	2,886	14
		" " 67 " Gilliland	1,386	20
		" rebate, 171 cars	1,710	
	28.	" 70 cat., 3 calves	1,099	22
	30.	" 48 "	662	75
	"	" 21 "	424	80
		Balance	29,773	63
			74,496	19

Nov.	1.	To balance		29,773	63		
	3.	" cash, d'ft		7,359	75		
	"	" " "		7,359	75		
	4.	" " "		7,187			
	6.	" " ex.		16			
	7.	" " N'l y'ds		1,568	10		
	"	" " shipper		8			
	8.	" " tel.		2	35		
	10.	" error fr't bill		29	40		
	"	" accept'ce due 14th		1,100	06		
	12.	" sale acc't on 3 bulls, deduction		20			
	17.	" cash, shipper		5			
	18.	" " & ex.		35	25		
	25.	" interest		278	41		
				54,742	70		
Nov.	25.	To balance		20,854	36		
134							
Nov.	25.	To balance for'd		20,854	36		
	26.	" cash to self		140			
Dec.	5.	" " W. H., dr'ft		652	53		
	23.	" Oneal & D.'s ac.		2	04		
	31.	" interest		192	25		
				21,841	18		

Nov.	5.	By pro. 292 cattle, O. & B.		709	90		
	7.	" " 168 "		359	15		
	"	" 189 " O.		3,633	67		
	"	" 41 " O. & Co.		569	50		
	"	" 45 "		613	43		
	10.	" cash, 294 " Chi.		7,065	60		
	"	" pro. 108 cat.		1,753	55		
	"	" 22 " Taylor		352	75		
	11.	" " 23 "		295	05		
	17.	" " 44 " O. & B.		772	16		
	19.	" " 202 "		3,385	42		
	"	" 209 "		3,606	41		
	22.	" " 64 "		654	50		
	25.	" rebate		1,020			
	"	" com.		97	25		
		Balance		20,854	36		
				54,742	70		
Nov.	28.	By com. at Terrell		55			
	"	" cash		460			
Dec.	1.	" " damage M. R. R.		2,269	50		
	8.	" pro. 46 cat.		579	30		
	"	" rebate		20			
		Balance		18,457	38		
				21,841	18		

Exhibit E to Original Bill—Continued.

1880.			1880.		
Jan. 1.	To balance	18,457 38	Feb. 6.	By cash claim, N. Y., reb.	120 00
31.	" interest	158 96	20.	" " " T. & P.	625
				Balance	17,871 34
		18.616 34			18,616 34
Feb. 20.	To balance	17,871 34			

E. & O. E.
Nat'l St'k Y'ds, Ills.

HUNTER, EVANS & CO.,
FLATO.

(Endorsed:) #21. U. S. cir. c't. Ch'y. Hunter, Evans & Co. *vs.* Oneal & Dawson. Exhibit "E" to original bill. Filed Sept. 30, 1881. A. J. Houston, clerk.

135 *Agreement.*

In U. S. Circuit Court, Northern District Texas, at Dallas. In Chancery.

HUNTER, EVANS & Co. *vs.* JOHN A. ONEAL and Others.

1. In this case it is agreed that both parties, from and after rule day in March, 1882, may proceed to take their evidence in like manner and as fully as could be done if answers of all the defendants and a general replication thereto were on file, no demurrer, plea, or exception heretofore filed by either party to be considered waived by this agreement.

2. It is further agreed that, if he shall so elect, the defendant Oneal may stand and rely on his pleadings heretofore filed in this cause when in the State court, including his pleas, motions, exceptions, demurrers, and answers, without amendment, or he may amend or replead.

3d. It is agreed that at the next term of said court we will bring all pleas, exceptions, and demurrers to a hearing in time to have a hearing on the merits at the same term, and if pl'ffs' case shall not be disposed of by such pleas, demurrers, or exceptions, and if an answer shall be required of defendants, that such answer will be immediately filed, and that pl'ffs may file a general replication
136 thereto at the same time, and, the evidence in the meantime having been taken, the case shall be then ready for hearing, and, with permission of the court, be heard on the merits.

4. It is agreed that defendants, The City National Bank of Ft. Worth and John Dawson, will submit their answers on which they will rely to pl'ffs' counsel, on or before the rule day in March, 1882.

A. T. WATTS &
SAWNIE ROBERTSON,
Solicitors for Complainants.
WELLBORN, LEAKE & HENRY,
Solicitors for Defendants.

(Endorsed:) Hunter, Evans & Co. *vs.* John A. Oneal *et al.* Agreement.

Amended Answer of City Nat'l Bank & Dawson.

In United States Circuit Court, Northern District Texas, at Dallas. In Chancery.

HUNTER, EVANS & Co.
vs.
JOHN ONEAL, JOHN DAWSON, & THE CITY NATIONAL BANK OF FT. WORTH.

The joint and several answers of John Dawson and The City National Bank of Fort Worth to the amended and original bills of complainants, Hunter, Evans & Co.

These defendants, now and at all times hereafter, reserving all manner of benefit and advantage to themselves of exception to

137 the many errors and insufficiencies in said bills contained, for answer thereto, or unto so much or such parts thereof as these defendants are advised is material for them to make answer unto, answer and say:

That on, to wit, the 10th day of December, A. D. 1879, the defendant, John Oneal, was justly indebted to defendant, The City National Bank of Fort Worth, the sum of nine thousand eight hundred and ten dollars and eleven cents, and to secure said sum of money and in consideration thereof, as well as other valuable considerations, the said John Oneal on said last-named date made, executed, and delivered to John Nichols, president of said The City National Bank of Fort Worth, a bill of sale conveying to said John Nichols all of the right, title, and interest of the said John Oneal in his home stock of cattle, consisting of beeves, two, three, and four year olds, cows, bulls, yearlings, and calves, marked and branded as follows: Branded O N on hips and sides and marked with swallow fork in each ear, subject to a bill of sale of the above-described property to Hunter, Evans & Co., on record in Van Zandt county, at the date of said bill of sale now being described, and also all of the home cattle of said Oneal (by which was meant and intended
138 all cattle owned by said Oneal) using and running in and near the said county of Van Zandt, branded "H" on hip, marked under slope in one ear & under half crop in the other ear, known as the John Howell mark and brand, and also all of the cattle of said John Oneal "branded thus, H on hip and I — shoulder and marked swallow fork in the left ear and under bit in the right ear, known as the Henry Fuller stock, and one hundred head of horses, mares, and colts, branded O N on left shoulder;" which said bill of sale is herewith filed as part of this answer, marked "Exhibit A."

Defendants aver that said bill of sale was intended to be and was in fact a mortgage made for the purpose of securing the payment of the aforesaid indebtedness from the said John A. Oneal to the said bank, as was shown by another written instrument made between said Oneal and said Nichols on the same day.

That the bill of sale to Hunter, Evans & Co. referred to in said bill of sale or mortgage to said John Nichols was dated the 21 day of August, 1879, — purported to be in consideration of the sum of twenty-two thousand dollars and to convey only the home stock of cattle belonging to said Oneal that were branded O N
139 on hip and side and marked with swallow fork in each ear and various other marks.

That at the date of the execution of said bill of sale the said Hunter, Evans & Co., and as part of the same transaction, had executed and delivered to said John A. Oneal an instrument in writing or defeasance showing that said bill of sale was intended to be and was a mortgage made to secure said last-mentioned sum of money.

Copies of which bill of sale and defeasance, marked, respectively, Exhibits B & C, are herewith filed as part of this answer.

That no delivery of said stock of cattle was ever made to said Hunter, Evans & Co, and, said Oneal had continued in possession

thereof after said bill of sale, holding, using, and disposing of them as if no such bill of sale had been made; and these defendants are informed and so charge that no such sum of money as that mentioned in said bill of sale and no sum amounting to that much was then or at any time afterwards due or owing from said Oneal to said Hunter, Evans & Co., and said bill of sale did not represent a *bona fide* transaction as to the consideration.

That defendant, The City National Bank of Fort Worth,
140 had knowledge, before it had the transactions with defendant Oneal out of which his indebtedness to it originated, that plaintiffs and said Oneal were having dealings for their mutual advantage, in the course of which said Oneal was purchasing in the State of Texas and shipping to pl'ffs at the city of St. Louis large numbers of cattle.

Defendants charge that the opportunities of plaintiffs to know the financial standing and the character and situation of the property of said Oneal was much better than was that of either of these defendants; that they had long had numerous and important transactions with him, and one of the partners and other agents had been much in Texas and in intimate and habitual communication with said Oneal, and being cattle dealers and familiar with cattle and their value, and having had the best means of informing themselves, they were much better acquainted than was either of these defendants with the stock of cattle owned by said Oneal, including marks and brands, quantities, qualities, and values, and, in fact, in all the various transactions had with plaintiffs in connection with said Oneal, or with the transactions between him and them, they, the plaintiffs, acted and relied on their own knowledge of him
141 and his property, and these defendants herewith file as part of this answer certain letters showing such reliance, written and sent by pl'ffs, marked, respectively, Exhibits ——.

These defendants further charge that it was at the special instance and request of plaintiffs that the said bank paid out and advanced to said Oneal the money out of which his indebtedness to said bank, existing as aforesaid, originated; that in order to aid their dealings with said Oneal, as aforesaid, an agent of plaintiffs, at and before the date of any dealings between said bank and Oneal, requested said bank, by and through one of the agents of pl'ffs, of one of the agents of said bank to furnish said Oneal money in such sums as he requested of them, for which said Oneal would give said bank a draft on plaintiffs, and all which drafts so given pl'ffs then and there agreed and promised they would pay when presented, and it was in consideration of this promise and agreement on the part of plaintiffs that the said bank did make such advances to said Oneal of divers and large sums of money, including the aforesaid sum of money due to said bank by said Oneal. On 10th day of December, 1879, and in pursuance of such promise, said Oneal gave said bank his
142 drafts for said sums of money on plaintiffs, and for a long time they were paid on presentation, until finally and without any rescis-ion of said promise or notice to said bank, pl'ffs failed and refused to pay a draft so drawn on them for said sum of money

by said Oneal when it was presented to them for payment; that said transactions were brought to an end by some trouble or disagreement between pl'ffs and said Oneal, and said Oneal disputing that he was indebted to pl'ffs in any such sum of money as the consideration stated in their bill of sale, and the officers of said bank having come to distrust the good faith and integrity of pl'ffs, and in further view of the fact that there had never been any delivery of said O N stock of cattle to pl'ffs, and of its being allowed to continue in the control and disposition of said Oneal, and in view of the further fact that plaintiffs began, wrongfully and groundlessly, as they well knew, to pretend and assert that their said bill of sale embraced and included all the marks and brands of said Oneal's home stock of cattle, — did threaten and declare their purpose, acting in the name of and for said bank, to bring the question of the validity and
143 priority of their said respective liens to issue before the courts of the country, but in doing and saying that made no misrepresentation to pl'ffs, who, being advised as they were then by learned attorneys, acted, as these defendants supposed, with a full knowledge of all their rights, and did nothing but with the design to advance and secure them.

It is true that at and before the time that the differences and conflicts arose between pl'ffs and the said bank and Oneal the cattle in contention were being pastured in and about the county of Van Zandt, but they were in their accustomed range running as they had always been before and as was and is the custom of the country, and were not liable to stray or be stolen or lost to any considerable, if any, extent whatever; at any rate they were much safer from loss of every character where they were in their accustomed range, and could have been preserved there at very much less cost than was possible when they were sequestrated, only a few days afterwards, at the instance of plaintiffs, in the distant county of Montague, where they were being driven through at the instance and request of plaintiffs.

144 Defendants are not sufficiently advised of the motives of pl'ffs in entering into the two agreements referred to in their amended bill to admit or deny their allegation that it was done solely to avoid the effects of litigation, nor what effect of litigation it was that they most anticipated and feared, but they charge that if such was the motive of pl'ffs it was a good one and should have been adhered to, especially after these defendants had been induced thereby to go to great expense as well as inconvenience and to change their conditions in important particulars.

But these defendants have good reason to believe and they do believe and now charge that it was not the fact alone that the said bank claimed its lien to be superior to pl'ffs on the O N stock of cattle, but it was because pl'ffs well knew that they had in fact no debt of near the sum stated in said bill of sale, and because of doubts they had about the fairness and validity of their transaction with Oneal, and because of the fact that while said bank had a lien on all the cattle that plaintiffs had it had also a lien on a large number of cattle of great value that plaintiffs' bill of sale did not in-

clude or embrace, as well as the fact that plaintiffs were
145 primarily liable to said bank for the payment of its debt, that they were induced to enter into the written contracts with the defendants in this cause referred to in pl'ffs' bill and amended bill and hereto attached as part of this answer, marked, respectively, Exhibits — —.

And by entering into and perfecting said agreements as these defendants charge that plaintiffs did they not only relieved themselves of liability for said debt from Oneal to said bank and of a controversy with said bank as to the validity, extent, and priority of their alleged lien on the O N brand of cattle, but they obtained an equal lien upon a valuable property that they had no lien or claim on before, and provided for the liquidation and collection of so much of their debt as was uncontested by said Oneal without loss, delay, expense, or risk and without surrendering any part of their demand in dispute between themselves and said Oneal, but, on the contrary, securing from him an agreement for a speedy and economical adjustment of that.

Defendants, further denying that the reservation in said contract as to the effect of its recitals referred to in pl'ffs' amended bill has or was intended in any event to have the operation contended by plaintiffs, say it had and was intended to have no other effect
146 or operation than to affect the force of such recitals in case the trade between defendants Dawson and Oneal, which was then under negotiation (said agreement between defendants Dawson and Oneal is herewith filed as part of this answer, marked Exhibit #—), should fall through or fail to be consummated, in which case said agreements would have nothing to operate on, but being then delivered it was thought prudent to provide that no expressions, admissions, or statements made in view of said transaction between Dawson and Oneal being completed should prejudice the rights of any party if such transaction was not executed. In other words, said agreements were intended to operate on the trade between said Oneal and Dawson and not independent of it; and when afterwards, on, to wit, the 22 May, 1880, the trade between said Dawson and Oneal was perfected said agreements took full and final effect.

That said Dawson purchased cattle from said Oneal embracing both of said bills of sale and on the faith of said two agreements, for which he agreed to pay the price of $19,033.11 and for which sum he executed his note, bearing ten per cent. per annum from date, payable to plaintiffs and said bank, and having
147 so executed his note said cattle were delivered to him with the full knowledge and consent of plaintiffs and said bank, and were openly and with their knowledge at great trouble and expense to said Dawson driven a long way on their route to market; and while on the drive said Dawson made two payments on said note to the agent of pl'ffs and said bank, one of which was received and divided between pl'ffs and said bank on the basis of said agreements, and the other of which falling by circumstances into the hands of plaintiffs about the time they had determined to violate and repudiate all of their obligations under said contract, the

whole of said payment was wrongfully kept and appropriated by them.

These defendants further aver that in pursuance of said agreements and contracts made and dated on the 20 day of March, 1880, afterwards, on, to wit, the 22 day of May, 1880, all of said parties—that is to say, the pl'ffs, by an agent, who was then and there assisted and advised by plaintiffs' attorney-at-law, and said bank, by one of its attorneys, and said Dawson and said Oneal—assembled at the town of Will's Point, in said county of Van Zandt, to carry into effect and finally execute said agreements.

148 That said Oneal, in consideration of said agreements and relying on their execution in good faith, has, at great labor and consumption of valuable time and great cost to him in money, collected, driven, and penned a large number, to —, 1,741 head of said cattle, including some of all the marks and brands referred to in each of said bills of sale, near said town of Will's Point, for the purpose of delivering and selling the same to said Dawson, in pursuance of all of said agreements; and it was in consequence of their having been notified by said Oneal and said Dawson that said cattle were so collected and ready to be so delivered and for the purpose of completing the sale thereof to said Dawson and the delivery of the same to him that plaintiffs and said bank did then and there meet, by their said agents and attorneys, with defendants, Oneal and Dawson.

That said Dawson, from and after said 20th day of March, 1880, relying on the carrying out of said agreements in good faith by the sale and delivery to him of said cattle early in May, 1880, had not attempted to purchase and have gathered other cattle, as he might have done, to enable him to fill large contracts for delivery

149 of cattle outside the State of Texas that he then had outstanding, but had given and consumed his time and labor and gone to great pecuniary expense in the gathering of said cattle until it was too late, on said 22 May, 1880, for him to have made other contracts and received other cattle in time for him to have complied with his said contracts, and by his failure to do that he would have incurred the loss of many thousands of dollars.

That when said parties *has* so assembled near the town of Will's Point nothing remained to be done by said Dawson to perfect his right to said 1,741 head of cattle save to execute his note in pursuance of said agreements for the purchase-money thereof and to receive the delivery of the cattle.

That he, the said Dawson, did then and there by and with the consent of all the parties to this cause execute his promissory note for the sum of $19,033.00, the price agreed on for said cattle, with interest thereon from date at the rate of ten per cent. per annum, and made payable on one day after the date thereof, A. D., to the said Hunter, Evans & Co. and the said City National Bank of Fort Worth, and having so executed his said note to the satisfaction of all of said parties said 1,741 head of cattle, which included

150 cattle in all the brands and marks owned by said Oneal and as many cattle not in the O N brand as there were of those

in said brand, were, with the knowledge and consent of plaintiffs and said bank, delivered by said Oneal to said Dawson; and, being so delivered, became the absolute property of said Dawson, free and divested of any and all liens, created or existing, in favor of either plaintiffs or said bank by reason of said bills of sale or either of them, and subject only to the new rights or liens acquired over the same as in this answer alleged; and having become such owner said Dawson, still with the knowledge and consent of plaintiffs and at great expense and consumption of his own time, labor, and money and risk, proceeded to drive or have driven said stock of cattle out of said county of Van Zandt and into said county of Montague, intending to continue such drive, as was well known and consented to by plaintiffs, out of the State of Texas, and until he was stopped and delayed by the plaintiffs by their suing out and wrongfully seizing said cattle by a writ of sequestration while they were *in transitu* in said county of Montague.

That in pursuance of that part of said agreements that provided that plaintiffs and said bank should each, in lieu and in satis-
151 faction of their respective liens existing by virtue of said bills of sale, have and take an interest in the said note of said Dawson in proportion to the amount of their respective debts against said Oneal that should be admitted by him to be correct, and that their security for the same and the means of their payment should be to receive from said Dawson the cash proceeds of the sale of said cattle by said Dawson, which sales it was contemplated would be made as soon as said cattle could be driven to their known points of destination or market beyond the boundaries of Texas and the performance of which was further secured by providing that plaintiffs and said bank might select and appoint a mutual agent to accompany said cattle on their drive and to their destination and be always present when the same or any part of them were sold, and, having possession of said Dawson's said note, to receive such payment or payments and credit the same on said note until it should be fully satisfied, the plaintiffs and the said bank did, at the nomination of plaintiffs, select and appoint as such mutual agent General Henery E. McCullough, who was capable and efficient, and, having so appointed him such agent and he having accepted it,
152 plaintiffs and said bank delivered to him, their said agent, the said note of said Dawson and saw him enter upon the duties of his agency.

That at the date of the execution as aforesaid of said note by said Dawson it was ascertained and agreed by and between plaintiffs and said bank and said Oneal that the *pro rata* interest of plaintiffs therein should be of the principal $9,317.22, and that the *pro rata* interest of said bank therein should be of the principal $9,715.78; and each of said parties were required by their said contracts to give said Oneal absolute credit on their respective demands against him for their respective *pro rata* interests in said Dawson note and to rely on that for their payment; and said bank did accordingly then and there give to the said Oneal a receipt for said sum of $9,715.78, acknowledging the payment of that much of their debt by him, and

pl'ffs acknowledged payment of the sum of $9,317.22 of their debt against said Oneal, which was all of said debt that he acknowledged to be due and all that he did not then and now dispute.

That immediately following the closing of said transactions and delivery of said cattle said Dawson, meeting with what he considered an advantageous offer, sold out of the cattle so purchased by
153 him and delivered as he had a right to do, in the presence of and with the knowledge of the said Henry E. McCullough, agent as aforesaid, a number thereof for the sum of $3,419.00, which he received and paid over then and there to said Henry E. McCullough, as mutual agent as aforesaid, and which was then and there credited on said Dawson's said note, said credit being entered thereon by plaintiffs' attorney-at-law, then present, to illustrate to the mutual agent how it should be done, and the said McCullough, as such mutual agent, and in the presence of the other agents of plaintiffs and said bank, by whom said contracts and agreements had been consummated, divided and prorated said payment of $3,419.00 by paying to the plaintiffs the sum of $1,668.50 thereof and by paying to said bank the sum of $1,750.50 thereof, and which payments were received and kept by plaintiffs and the bank without objection.

And afterwards, on, to wit, the 26 May, 1880, said Dawson, having sold other of said cattle, paid said McCullough, as such agent, as proceeds thereof the sum of $1,842.00, which was also credited by him on said Dawson's note; but the payment being made to him in the form of a check on persons in St. Louis, where pl'ffs then
154 resided, said McCullough, trusting to the honesty of plaintiffs, forwarded said check to plaintiffs for collection, and at the same time drew a check on plaintiffs in favor of said bank for the *pro rata* part of said payment, which belonged to said bank, which was, to wit, the sum of $939.88.

Defendants aver that plaintiffs presented said check so forwarded them and collected $1,842.00, the full sum thereof, but when the said check for their *pro rata* part, $939.88, was presented to plaintiffs at the instance of said bank they refused to pay the same or any part thereof, and have always since so refused, and have wrongfully appropriated the whole thereof to their own use, and though often since requested to pay said sum of money have never paid or tendered payment of the same and do not now bring said money or said Dawson's note into court or offer and provide for placing the other parties to said contracts in the like favorable condition that they occupied when they were made or offer to indemnify them for the losses they have incurred by relying on plaintiffs' promises.

Defendants herewith file the letters and reports of s'd McCullough in regard to s'd agency as part of this answer, marked Exhibits — —.

These defendants deny that the two agreements referred to
155 in plaintiffs' amended bill are parts of each other in the sense that all the provisions of the one are provisions of the other, in the sense that all agreements between the same parties in relation to the same transaction and executed at the same time are to be treated as one instrument, because they say the two agreements now in controversy were not between the same parties, because

there was a party to each and not a party to the other and not bound by the recitals in the one to which he was not a party, and said agreements embrace separate, independent, and distinct obligations and rights; defendant Dawson was not a party to or in any way bound by the agreement between pl'ffs and said bank and said Oneal, and said Oneal was not a party to or bound by the one between pl'ffs and said Dawson and said bank.

The purpose of the various contracting parties in entering into said three several agreements was to accomplish the double purpose of transferring and selling to said Dawson the title to the cattle delivered to him as aforesaid, disencumbered and free from every and all liens or claims theretofore held against them by plaintiffs or said bank, and charged only with the new lien or trust on the
156 same provided to be enforced as aforesaid through the agency of said McCullough, and at the same time to provide for certain settlements, contingencies, and securities between same, and not all of said contracting parties.

Wherefore several separate and distinct agreements were entered into, each relating to separate and distinct rights, obligations, and undertakings of the parties to each agreement; but each of said agreements provided for separate obligations and rights from each other one, and any party to one of them not a party to another one was not liable for and had no means of compelling performance of such other one.

Defendants say that in compromising and adjusting the rights and obligations of so many different parties and interests involving the introduction of def't Dawson, a new party who had no connection with the old transactions, it became and was necessary to make a number of separate and distinct agreements, some joint as to some of the parties interested and separate as to other parties, but none joint as to all.

These defendants say the allegations in plaintiffs' amended bill of the substance of the two agreements therein referred to, one signed by defendant Oneal and pl'ffs and the defendant bank, the other by the def't Dawson, pl'ffs, and said bank, are in the
157 main correct, and where not correctly stated is shown by the copies of said agreement filed as exhibits to said amended bill, but they allege that the interpretation and construction thereof, as well as the inferences, deductions, and conclusions drawn in said bill thereon, are fallacious and unauthorized by anything contained in said agreements.

Defendants aver that by said agreements with plaintiffs and by the subsequent execution thereof by the purchase of said cattle by def't Dawson, and the giving of his note with the trust aforesaid, the original claims and liens of pl'ffs and s'd bank on s'd cattle purchased by s'd Dawson were forever extinguished, and said new lien, different in every particular, was substituted in their places.

It is not true, as plaintiffs allege in their amended bill, that said original claims or liens of pl'ffs and said bank, or either of them, followed said stock of cattle into the possession of said Dawson after their sale and delivery to him as aforesaid, and it is not true that

said Dawson acknowledged in the agreement aforesaid, to which he was a party with pl'ffs and said bank, or at any other place or in any manner, that said cattle so sold and delivered to him were after such sale and delivery in any manner or to any extent subject
158 to or bound by said liens theretofore existing in favor of either plaintiffs or said bank; but it was to the new and specific lien or trust created by said Dawson in favor of plaintiffs and said bank jointly that reference was meant and intended by the expressions in said agreement between said Dawson, plaintiffs, and said bank, in regard to said Dawson's possession of said cattle and his purchase thereof being subject to a lien in favor of plaintiffs and of said bank.

These defendants aver that before the said cattle were delivered as aforesaid to said Dawson, and at the time of such delivery, plaintiffs knew the exact extent to which their said debt against him was disputed by said Oneal, and the amount so disputed was not only known, but it was the necessary basis of the appropriation of the proceeds of payments made on said Dawson's said note and of the receipts given, respectively, by pl'ffs and said bank to said Oneal, and being so known plaintiffs consummated and executed said agreements as aforesaid and afterwards ratified such consummations by receiving and appropriating the fruits and benefits thereof.

That as to the haste of said Dawson to commence the drive of said cattle, his object in making their purchase was to make
159 profit in selling them again and in fulfilling contracts of sale; that he expected to accomplish these purposes by having said cattle or the bulk thereof driven or transported out of the State of Texas, which was known to pl'ffs; that punctuality and dispatch was of material importance, and twelve days beyond the time named in said agreement of sale had already elapsed, to the injury of s'd Dawson. Wherefore, having become the owner of said cattle and executed his agreement, and to avoid the expense and loss of delay, he was anxious to commence and did commence to drive said stock of cattle, at great labor, expense, and risk, to its point of destination out of the State of Texas and over a route running through the county of Montague, in said State, all with the knowledge and consent of plaintiffs.

These defendants say that the agreements executed, respectively, by them as aforesaid were so executed at Fort Worth on, to wit, the 20 day of March, 1880, the date stated in plaintiffs' amended bill; that they were preliminary to the then proposed but afterwards consummated sale from Oneal to def't Dawson; that they depended for effect, and as the only contingency affecting them, upon
160 the consummation of said sale, including only the gathering and delivery of the cattle by Oneal to Dawson and the payment of price stipulated for between Oneal and Dawson by Dawson in the manner provided for in the agreement between said Dawson and plaintiffs and said bank; that the meaning of the reservation and limitation of its recitals in the aforesaid agreement between said Oneal and plaintiffs and said bank was that if said sale by said Oneal to said Dawson should not afterwards be consummated by the delivery of said stock of cattle, or, more truly stated, of so many

cattle as should be sold and delivered by said Oneal to said Dawson, and by the payment or securing of the price thereof by said Dawson as provided in said agreement, then in any future suit that might arise between said Oneal and plaintiffs and said bank, or between any of them, in relation to their then existing demands and claims, or any of them, the recitals in the said agreements then executed and delivered should not be used to the prejudice of any of said parties, and said reservation and proviso did not mean and was not intended to mean or accomplish anything more; that it required time, labor, and money to gather, count, and deliver said stock of cattle, and the object of executing said agreements in advance
161 of the completion of the purchase by Dawson of the cattle was to assure the sale after such labor and expense had been incurred.

That, relying on their respective agreements, said Oneal and Dawson proceeded to perfect the said sale and agreed upon the price per head to be paid by said Dawson for the said cattle and for the place of delivery thereof to be at a pen near the town of Will's Point, in said county of Van Zandt; that at great trouble and expense, both to defendant Oneal and defendant Dawson, a large number of cattle belonging to said Oneal and embraced respectively in the liens of pl'ffs and said bank, some in — and some in the other, had been gathered, driven, penned, and were ready for delivery at said place of delivery on the 22 May, 1880, and said Dawson and Oneal being present at the place of delivery, the plaintiffs and said bank, on being notified of the readiness of said cattle and the proposed delivery thereof, made their appearance, by their agents and legal advisers, at said place of delivery on said last-mentioned date for the purpose of consummating the sale and delivery of said cattle to said Dawson, and then and there, by the act, procurement, consent, and ratification, knowingly and voluntarily given, of plaintiffs, said bank, said Oneal, and said Dawson, said sale was consum-
162 mated and completed by the doing and performing by each and all of said parties of everything agreed upon or required to be done, and said cattle were delivered to and then and there became the property of said Dawson, free and divested of the aforesaid original liens and claims of plaintiffs and of said bank.

And these defendants further charge that, without knowing the details of the pecuniary transactions between pl'ffs and said Oneal, they have been informed and they now charge it to be a fact that said O'Neal did, at the date of the said sale, have a large and valuable number of other cattle not included in said sale and delivery to defendant Dawson, but which said Oneal was willing and then offered to deliver to said Dawson, upon the same terms and for the same purpose, if the required time for the gathering thereof was allowed, and that his proposition was to do so in a few days; but plaintiffs, being satisfied, agreed that the delivery of the stock then gathered should take place without waiting to include more, by which their security would have been increased.

At the date of said sale and delivery to said Dawson def't Oneal had owned of the same stock of cattle ranging in the county of Van

Zandt part of the O N brand and not included in the sale or
163 delivery to said Dawson as many as 350 head, of the value of $5,250.00, as pl'ffs well knew, and which were seized a few days afterward by an *alias* writ of sequestration, wrongfully issued at the instance of pl'ffs in this case.

And these defendants further aver that they are informed and believe and they now charge that at the date of said sale and delivery said Oneal was solvent, and that he owned real estate in the said county of Van Zandt and elsewhere in the State of Texas of value much more than sufficient over and above every lien on or against the same to pay off and fully discharge much more than said sum of $8,500.00 disputed and contested between him and plaintiffs, and that then and there on said 22 May, 1880, he had placed in the hands of his attorney his title papers to such real estate with instructions and for the purposes of him, his said attorney, preparing a lien or mortgage on said lands to secure the ultimate payment of said disputed amount, and his said attorney was then and there ready to prepare the instrument creating such lien and security, and said Oneal was ready and proposed to execute the same, which purpose and readiness was then and there made known to the attorney of
plaintiffs, and the execution of the same was prevented only
164 by the claim and demand of plaintiffs then and there made that said security should include a power to sell said property at public sale and for cash within ten days after the amount due pl'ffs from said Oneal should be ascertained, which was declined by the attorney of said Oneal because not required or justified by the agreement aforesaid, and because arbitrary and unjust and leading to the sacrifice of said property, and pl'ffs insisting on such rigid and unauthorized exaction said security was not executed, very much to regret of said Oneal.

And in fact they charge that said Oneal was very anxious to arbitrate and secure and settle the amount due by him to plaintiffs, and then and there and afterwards repeatedly offered and was always ready and willing to do so, but pl'ffs, by their att'ys and agents, intending to intimidate and oppress him, then *are* there refused to take said security, except the power to forclose it as aforesaid was given, and boasted that unless he submitted to their exactions they would immediately cause suits to be instituted against him and his property to be seized and sold, and it was in reply to such threats as these and so made that the attorney of said Oneal and not said
Oneal himself said and retorted in a spirit of bravado and
165 not seriously and not in the hearing or with the knowledge of said Oneal that plaintiffs could not accomplish anything by that course, because said Oneal was insolvent and his land and cattle mortgaged beyond their value, and the few cows and calves owned by him were exempt from forced sale, &c., which was said to facilitate a settlement according to said agreement and not to defeat it.

And which statements, so far as said property being mortgaged, &c., could have been easily ascertained by the records, or by investigation, or by showing any disposition to carry out said agreement in good faith, to be a delusion, and said statements were not in fact

the cause of the failure of plaintiffs to consummate their agreement with said Oneal, and were not made to prevent the same, but were intended rather to advance the same, but the real cause of the failure to consummate the same was that plaintiffs had conceived the purpose and really intended to put into execution, their threats of suit, &c., by doing what they in fact proceeded to do in a day or so after—that is, sue and seize the property in a distant county under circumstances that they believed would lead to its being surrendered to them rather than suffer the damage, delays,
166 and lossess that they believed would otherwise be produced to defendants; and in fact, in regard to all matters in dispute between plaintiffs and defendant Oneal, these defendants say their agreements, settlements, rights, and obligations were never made or intended to be made dependent upon their final settlement; but if by any possibility these defendants shall be found to be mistaken in their conclusions as to the interpretation and effect of said agreement, then they charge that plaintiffs, by their acts in making said agreements, in afterwards allowing and consenting to the delivery of said cattle to defendant Dawson, and to their being driven by him beyond the limits of the county, by accepting his promissory note for the purchase-money of said cattle, by allowing him to sell part of said cattle as his own property, and by accepting a *pro rata* part of the proceeds of said cattle and appropriating the same, according to the terms of their agreement with said Dawson and said bank, as a completed agreement, and by their sending, in connection with said bank, a mutual agent to accompany said cattle out of the county of Van Zandt and into and out of the county of Montague and out of the State for the express purpose of consenting to
167 and aiding such driving and such sale of said cattle by defendant Dawson as the absolute owner thereof and to receive the proceeds of such sale and divide it between plaintiff and said bank, according to the terms of their agreement waive all right, if such existed, to annul said agreements and contracts or any part of the same, and said waiver estops plaintiffs from denying that said cattle had become the property of said Dawson and from asserting any other claim or lien on the same save and except their right to participate as aforesaid in the fund produced by their sale by the said Dawson.

These defendants charge that plaintiffs have acted in bad faith, inequitably, fraudulently throughout the whole of said transactions.

Plaintiffs well knew that none of the defendants herein were residents of the county of Montague or liable to be sued therein on a personal demand, and they well knew that the legal *situs* of said stock of cattle was in the county of Van Zandt and not in the county of Montague. They well knew that if they had any cause of action or lien on said cattle they existed before the cattle left said county of Van Zandt and that they had waived the same. They well knew that said property was never situated in the county of Montague,
168 but was in the act of being passed through said county by their consent and under the supervision of their own agent, and they knew the fact of the claim and interest of said bank in

said cattle as well as the legal necessity of its being made a party to this suit, but in view of all this they instituted this suit in a county without jurisdiction on a cause of action which they knew had been extinguished and on a ground which, if it existed at all, was by their own procurement. They well knew the fact, now charged to be true, that there was never any undertaking or promise to perform said contract in the said county of Montague, and yet they causelessly procured said cattle to be seized by a writ of sequestration wrongfully and fraudulently sued out to give the district court of that county jurisdiction, intending by reason of the inconvenience to said Dawson and the want of pecuniary ability of the defendants to prevent their replevying said cattle and to make them suffer irretrievable damage or submit to a settlement upon plaintiffs' own terms, and it was to avoid the aid that the pecuniary abilities of said bank would be of to the defendants in protecting their just and legal rights under such harsh proceedings rather than ignorance of its being a necessary party to this suit that it was omitted as a defendant.

169 These defendants further charge that while said cattle were *in transitu* as aforesaid said Dawson sold another lot of said cattle and paid the proceeds thereof, amounting to the sum of one thousand eight hundred & forty-two dollars, to said mutual agent of plaintiffs and said bank, which sum was credited by him on said Dawson's note, which he was carrying with him for collection as aforesaid and which it was his duty to prorate between plaintiffs and said bank as aforesaid, but which sum, being paid in a draft on a house in the city of Saint Louis, the place of residence of plaintiffs, was endorsed by said mutual agent and forwarded to pl'ffs for collection, and at the same time he drew a draft on pl'ffs in favor of said bank for its *pro rata* part of said payment, which draft, though duly presented for payment to pl'ffs, they failed and refused to pay, but in bad faith appropriated the whole of said money and still so appropriate it, as shown by their bill, without the consent of said bank.

These defendants further say that the said note of said Dawson has never been surrendered or offered to be surrendered to him by pl'ffs even to the extent they may have power over the same; that the money paid them in pursuance of said agreements has never been refunded or offered to be refunded by them; that

170 they have never restored or offered to restore any party to any of said agreements to the status that each party occupied before they were made, and they have never surrendered or offered to surrender any benefit or advantage that they have derived from them, but still retain all of them while they repudiate their corresponding obligation.

These defendants deny all charges in plaintiffs' original or amended bills of fraud or fraudulent combinations between said Oneal and said Dawson and said bank or any of its officers to do the things charged in said bills or either of them or to do the whole or any part of said things; and they deny that said Dawson ever — any time disposed of said cattle or any portion thereof after they were so as aforesaid delivered to him or offered or intended to dispose of

them, contrary to the true intent and meaning of his agreements aforesaid, but, on the contrary, they say said Dawson was carrying out said agreement in good faith.

These defendants say that it is true that for several days before the date of said agreements said Dawson and said Oneal were negotiating and discussing the sale to said Dawson of said stock of cattle, and, it being found necessary to have the consent of the officers of said
171 bank as well as plaintiffs to said sale to make the title of said Dawson good, conversations were had between said Oneal, Dawson, the officers of the bank, and pl'ffs' agents, but nothing was at any time said or proposed by any of said parties in regard to deceiving or taking any advantage of or injuring in any way the plaintiffs herein, and if said Oneal had any purpose to or in any manner or by any means contemplated, intended, or tried to deceive plaintiffs or either of them or to get any undue advantage such purpose was never communicated to either of these defendants by said Oneal or any other person and never in any manner or by any means came to the knowledge of them or either of them, but, on the contrary, they believed and had every reason to believe that said Oneal was acting and was intending to act in the utmost good faith with the plaintiffs, and the only declarations ever made by said Oneal within their hearing or that ever came to their knowledge were to the effect that he intended and had the means to secure and pay plaintiffs all that he was justly owing them, but they charge that plaintiffs themselves well knew from said Oneal himself long before said agreements were signed that he did not acknowledge, but disputed, the justice of a considerable part of their accounts against him.

172 These defendants further deny that previous to and at the date of said agreements the said bank or its officers had any knowledge of the number or value or situation of the cattle owned by said Oneal, whether included in said pl'ffs' bill of sale or in said bank's deed of trust or outside of both, further than the representations and statements made to them in regard thereto by said Oneal and said bank, nor any officer or agent of said bank never, after any private conversation with said Oneal and Dawson or either of them or at any other time, pretended or represented to plaintiffs or either of them or to any agent of theirs that said bank or any of its officers or agents had any such knowledge; and these defendants say it is not true that either of them deceived or caused to be deceived pl'ffs or either of them in any respect, but the fact is that even with the advice of their attorney, as alleged in their bill, pl'ffs were not convinced that their debt was secure as it stood, and they did not enter into the new arrangement only for the purpose of pleasing and accommodating the bank and with unselfish motives, but they entered into it to better their own condition, and persisted in and adhered to it after they had enjoyed the opportunity of mature reflection and after they had seen the very stock of cattle that Oneal
173 was selling to Dawson.

These defendants deny all allegations in said bill in regard to collusion by them or either of them to get possession of said stock

of cattle or to get said agreements executed before there was a full and final settlement by and between plaintiffs and defendant Oneal with the purpose of obtaining by any def't hereto any advantage over or from plaintiffs, and they deny that said Dawson ever disposed of any of said cattle in any other manner than such as he was authorized to do by the terms of his said agreements and as the owner thereof, or that he ever made any disposition of any part of the same which he concealed from the said McCullough, or that the said McCullough was deceived in any respect; that the said McCulloch undertook to keep along with the cattle and if he failed to do so it was not the fault of said Dawson, and neither deprived him of the right to sell or exchange said stock of cattle, or conferred on him the right to divert the proceeds thereof from the purposes agreed on as aforesaid, and they charge that none of said things were done.

These defendants deny that said stock of cattle after it was replevied was sold by said Dawson to said bank for the sum of sixteen thousand five hundred dollars.

174 These defendants adopt all of the allegations and exceptions and demurrers and pleas filed by the defendants, Dawson and Oneal, in the district court of Montague county, as well as the answer of defendant Oneal, filed in this court, and pray the benefit of the same as fully as if pleaded in due order in this court or as if set out herein.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained material or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of these defendants.

All of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

BALL & McCART,
WELLBORN, LEAKE & HENRY,
Solicitors for Defendants.

(Endorsed:) Hunter, Evans & Co. *vs.* The City Nat'l Bank of Ft. Worth. John Dawson, John O'Neal.

175 *Bill of Revivor.*

In U. S. Circuit Court at Dallas. In Chancery.

HUNTER, EVANS & Co.
vs.
JNO. ONEAL *et al.*
} No. 21.

Now come the complainants in the above-entitled cause, R. D. Hunter, A. G. Evans, & M. P. Buel, citizens of the State of Missouri,

and respectfully show they filed in the district court of Montague county, Texas, their original bill against Jno. A. Oneal & Jno. Dawson, and both said defendants appeared & pleaded thereto in due time; that said cause was then removed to this court, and upon the order of this court complainants filed their amended bill herein on September 30, 1881, making by said bill the City National Bank of Ft. Worth also a party defendant to said suit; that said defendant Oneal had pleaded to the jurisdiction of the district court of Montague county, and, subject to said plea, by an agreement of the parties to said suit, the same was put at issue and testimony taken & publication thereof had at the rule day in December, 1882; that during the said month of December, 1882, the said defendant Oneal departed this life intestate, and Mary Oneal, who resides in Van Zandt county, Texas, and is a citizen of said State, was duly appointed & qualified as the administratrix of the estate of said Jno. A. Oneal; that the relief sought by complainants against
176 said Oneal was the establishment & recovery of a debt due by him to complainants & the foreclosure of a mortgage given by him to secure said debt, and since the death of said Oneal complainants are entitled to that relief against the said administratrix; wherefore complainants pray that said suit abated by the death of said Oneal may be revived, and that the writ of subpœna may issue herein to the said administratrix, and that such further proceedings may be had in said cause as in law & equity are proper, &, as in duty bound, complainants will ever pray, &c.

A. T. WATTS &
SAWNIE ROBERTSON,
Solicitors for Compl'ts.

(Endorsed:) No. 21. Ch'y. Hunter, Evans & Co. *vs.* Jno. A. Oneal *et al.* Bill of revivor. Subpœna waived & service accepted this April 30, 1883. Leake & Henry, solicitors for defendant.

Appearance of Mary Oneal.

In United States Circuit Court, Northern District Texas, at Dallas.

HUNTER, EVANS & CO. *vs.* JOHN A. ONEAL *et al.*

And now comes Mary Oneal, defendant named in the bill of revivor filed by the plaintiffs, by her solicitors, and enters her appearance in this cause.

MARY ONEAL,
By LEAKE & HENRY,
Solicitors for said Defendant.

177 (Endorsed:) No. 21. Hunter, Evans & Co. *vs.* John A. Oneal *et al.* Appearance of Mary Oneal.

of cattle or to get said agreements executed before there was a full and final settlement by and between plaintiffs and defendant Oneal with the purpose of obtaining by any def't hereto any advantage over or from plaintiffs, and they deny that said Dawson ever disposed of any of said cattle in any other manner than such as he was authorized to do by the terms of his said agreements and as the owner thereof, or that he ever made any disposition of any part of the same which he concealed from the said McCullough, or that the said McCullough was deceived in any respect; that the said McCulloch undertook to keep along with the cattle and if he failed to do so it was not the fault of said Dawson, and neither deprived him of the right to sell or exchange said stock of cattle, or conferred on him the right to divert the proceeds thereof from the purposes agreed on as aforesaid, and they charge that none of said things were done.

These defendants deny that said stock of cattle after it was replevied was sold by said Dawson to said bank for the sum of sixteen thousand five hundred dollars.

174 These defendants adopt all of the allegations and exceptions and demurrers and pleas filed by the defendants, Dawson and Oneal, in the district court of Montague county, as well as the answer of defendant Oneal, filed in this court, and pray the benefit of the same as fully as if pleaded in due order in this court or as if set out herein.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained material or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied is true to the knowledge or belief of these defendants.

All of which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

BALL & McCART,
WELLBORN, LEAKE & HENRY,
Solicitors for Defendants.

(Endorsed:) Hunter, Evans & Co. *vs.* The City Nat'l Bank of Ft. Worth. John Dawson, John O'Neal.

175 *Bill of Revivor.*

In U. S. Circuit Court at Dallas. In Chancery.

HUNTER, EVANS & Co.
vs.
JNO. ONEAL *et al.*
} No. 21.

Now come the complainants in the above-entitled cause, R. D. Hunter, A. G. Evans, & M. P. Buel, citizens of the State of Missouri,

and respectfully show they filed in the district court of Montague county, Texas, their original bill against Jno. A. Oneal & Jno. Dawson, and both said defendants appeared & pleaded thereto in due time; that said cause was then removed to this court, and upon the order of this court complainants filed their amended bill herein on September 30, 1881, making by said bill the City National Bank of Ft. Worth also a party defendant to said suit; that said defendant Oneal had pleaded to the jurisdiction of the district court of Montague county, and, subject to said plea, by an agreement of the parties to said suit, the same was put at issue and testimony taken & publication thereof had at the rule day in December, 1882; that during the said month of December, 1882, the said defendant Oneal departed this life intestate, and Mary Oneal, who resides in Van Zandt county, Texas, and is a citizen of said State, was duly appointed & qualified as the administratrix of the estate of said Jno.
A. Oneal; that the relief sought by complainants against
176 said Oneal was the establishment & recovery of a debt due by him to complainants & the foreclosure of a mortgage given by him to secure said debt, and since the death of said Oneal complainants are entitled to that relief against the said administratrix; wherefore complainants pray that said suit abated by the death of said Oneal may be revived, and that the writ of subpœna may issue herein to the said administratrix, and that such further proceedings may be had in said cause as in law & equity are proper, &, as in duty bound, complainants will ever pray, &c.

A. T. WATTS &
SAWNIE ROBERTSON,
Solicitors for Compl'ts.

(Endorsed:) No. 21. Ch'y. Hunter, Evans & Co. *vs.* Jno. A. Oneal *et al.* Bill of revivor. Subpœna waived & service accepted this April 30, 1883. Leake & Henry, solicitors for defendant.

Appearance of Mary Oneal.

In United States Circuit Court, Northern District Texas, at Dallas.

HUNTER, EVANS & CO. *vs.* JOHN A. ONEAL *et al.*

And now comes Mary Oneal, defendant named in the bill of revivor filed by the plaintiffs, by her solicitors, and enters her appearance in this cause.

MARY ONEAL,
By LEAKE & HENRY,
Solicitors for said Defendant.

177 (Endorsed:) No. 21. Hunter, Evans & Co. *vs.* John A. Oneal *et al.* Appearance of Mary Oneal.

Agreement for Publication of Testimony.

In U. S. Circuit Court at Dallas. Chancery.

HUNTER, EVANS & Co.
vs.
ONEAL, DAWSON, *et al.* } No. —.

Now come the parties in & to the above-entitled cause and agree that the testimony, the taking of which in said cause has been completed & closed in said cause, may be this day opened & published with the same effect as if done by order of court.

This Nov. 8, 1882.

SAWNIE ROBERTSON,
Solicitor for Complainants.
WELLBORN, LEAKE & HENRY,
Solicitors for Defendants.

(Endorsed:) No. 21. Ch'y. Hunter, Evans & Co. *vs.* Oneal, Dawson, *et al.* Agreement for publication of testimony. Filed Nov. 8, 1882. A. J. Houston, clerk.

Depositions of R. D. Hunter, M. P. Buel, L. W. Evans, F. W. Flato, Jr., Pl'ffs' Witnesses.

Depositions of R. D. Hunter, M. P. Buel, L. W. Evans, F. W. Flato, Jr., taken before Seneca N. Taylor, a notary public, St. Louis Co., Missouri, and sworn to before him on the 9th of December, 1882.

Interrogatories propounded to J. B. F. Sampsel, F. W. Flato, Jr., Lewis Evans, M. P. Buel, A. J. Evans, and R. D. Hunter,
178 witnesses for the plaintiffs, and which said interrogatories the said witnesses will answer separately and each for himself.

(Answers of R. D. HUNTER to the following interrogatories:)

Interrogatory first. State your name, age, and occupation; also state what interest, if any, you have in the above entitled and numbered cause.

Answer to 1st int'y. My name is Robert D. Hunter; I am 47 years of age; am in the live stock commission business at the National Stock Yard, Ills.; I am a partner in the firm of Hunter, Evans & Co., the pl'ffs in this suit; I have a ⅜ interest in said firm and the same in this suit.

Int'y second. State fully all and everything you know about the claim upon which this suit is based; when and how did it occur. If the same grew out of a business transaction by and between the plaintiffs, Hunter, Evans & Co., and the defendant, John A. Oneal, with reference to the shipment and sale of cattle and advances made, then you will state all you know about the same, giving names, dates, and other particulars. You will also please append to your

answer hereto a full and complete statement of all the trans-
179 actions between said parties, and you will also, in answering this interrogatory, explain fully and particularly each and every item in said statement, and if there are any vouchers as to items therein charged, then give the nature of said voucher and in whose possession the same may be found.

Answer to 2d int'y. This suit is based upon transactions between the def't Oneal & my said firm during the year 1879; some time in Feb., 1879. I was in Texas in the interest of my said firm when I met said Oneal. He asked me if our said firm would furnish him money to buy and ship cattle with during the spring & summer of 1879. I agreed, on the part of our said firm, to do this for him on cattle ready for shipment. The cattle were to be consigned to our said house at National Stock Yard, Illinois. I further agreed with Oneal to pay him a rebate of ten (10) dollars per car off of the $100.00 rate of freight from Fort Worth, Texas, to said National Stock Yards on his own cattle and cattle purchased by him for shipment to our said firm. I also agreed to pay him half commission on any cattle that he caused to be consigned to our said firm from Terrell, Texas, and points on the Transcontinental R. R.
180 only outside of his own. Some time in March, 1879, he made application to our firm for permission to draw time drafts on us for the purpose of making advances on cattle contracted for by him for shipment to our said firm as soon as said cattle were fat enough and ready for market, to which plaintiffs agreed, and accepted his time drafts from time to time, as is shown in statement attached as an exhibit to witness Buel's testimony. Later in the season our firm thought Oneal was paying foolish prices for cattle, and from time to time cautioned him by letters (copies of which are hereby attached, marked 1, 2, 3, 4, 5, 6, 7,) about buying any more cattle, and also about making drafts on us without having shipments of cattle ready to cover drafts, to which he, def't Oneal, paid no attention. After writing him repeatedly to come to St. Louis and fix up his matters with us, he came about the 20 of Aug., 1879, and gave us, pl'ffs, a bill of sale of his stock of cattle branded O N and held in Van Zandt and adjoining counties, Texas, for the purpose of securing his indebtedness to our said firm.

Int'y third. If — the statement called for in the foregoing
181 interrogatory there are any items of interest charged against the defendant, John Oneal, then explain fully such items; and if in said statement there is any item of loss on shipment to New York you will state fully all and everything you know about the same; and if you have any letter or letters of the defendant, John Oneal, with reference to said items or with reference to said shipment, then please attach the same, properly identified, to your answer hereto and state in whose handwriting said letter or letters are and how you know that fact.

Answer to third int'y. It is always customary with us and with others in our line of business, as far as I am acquainted, to charge interest on our drafts, and from Sept. 30, 1879, we charged def't Oneal interest on his account because he was largely overdrawn as

to cattle shipped to New York. I know nothing except what appears from statement heretofore referred to. A copy of our letter to Oneal is attached to witness Buel's testimony.

Int'y fourth. If in said statement there are any items of exchange or amounts paid shippers, or both, then you will please explain fully each and every of said items, giving date, names, and other particulars.

182 Answer to fourth int'y. It is our custom to charge exchange and amounts paid shippers to all our customers just what it cost us. We have charged def't Oneal just what we actually paid for him and no more.

Int'y fifth. If in answer to any of the foregoing interrogatories you say that plaintiffs, Hunter, Evans & Co., sold cattle consigned or shipped to them by def't, John Oneal, then you will please state to whom & when & where did plaintiffs sell such cattle; and if pl'ffs were during said time engaged in the business of live stock commission merchants, then state where they were so engaged; also state whether during said time they sold cattle other than those belonging to the defendant, John Oneal; and, if yea, how many, and state for how many different persons.

Answer to fifth int'y. Our firm sold about 10,000 to 12,000 cattle shipped to us by def't Oneal during the year 1879. We sold these cattle to very many different buyers—some of them we sold to the St. Louis Beef Canning Co. We were then & for many years previous thereto in the live stock commission business, and are still carrying on the same business at the National Stock Yards, in

183 St. Clair Co., Ills. We sold during the year 1879 something over 80,000 head of cattle belonging to very many different parties.

Int'y sixth. If, in answer to the foregoing, you say that the plaintiffs did sell cattle for the def't Oneal in East St. Louis, Illinois, or elsewhere as live stock commission merchants, and that they sold said cattle or a portion thereof to the Beef Canning Company or Beef Packing Company of St. Louis, Missouri, then state what interest, if any, plaintiffs then had in such company; how said business was managed; who controlled the same; and state whether def't Oneal knew of such interest at the time and whether or not he knew to whom said cattle were being sold by plaintiffs, and if he made any objections to such sale. Then state all and everything he said and done about the matter. State fully and particularly all you know about the same.

Answer to sixth int'y. Pl'ffs as a firm had no interest in the said Beef Canning Co. I have, individually, about $\frac{1}{10}$ of the stock of that corporation. It was controlled by a president, vice-president, and general manager. H. S. Newman was pres't, N. C. Hudson, vice-

184 president & treasurer; G. L. Ivy, gen'l manager, and A. G. Evans, sec'y. Oneal knew all these facts, for I have myself informed him of them. Oneal also knew that our firm sold some of his cattle to the Beef Canning Co., because he was present and saw them sold. He never made any objections to such sales

because the said canning Co. was the best buyers in the market for his (Oneal's) class of cattle, and frequently the only buyers.

Int'y seventh. What difference, if any, was made by the plaintiffs in selling cattle belonging to the def't, John Oneal, and the cattle of their other customers; for how much less or how much more were def't Oneal's cattle sold by the plaintiffs than those of other customers? State fully and particularly any and everything you know about the matter.

Answer to seventh int'y. Def't Oneal's cattle were sold for as much as any other cattle of the same quality and kind would sell for on the market, and we used every means in our power to obtain the highest prices for them.

Int'y eight-. State whether Hunter, Evans & Co. (pl'ffs) sold live stock shipped to them, including those of the def't Oneal, to the said Beef Canning Company as a matter of choice or other-
185 wise. Please state fully and particularly how and in what manner the pl'ffs made such sales and what price or prices they obtained for such live stock; and, if any, state what difference they made as to price in selling to the Beef Canning Company and other purchasers.

Answer to eighth int'y. Our firm sold a great many cattle for others than Oneal to the said canning Co. We did not sell cattle to said company as a matter of choice, but, as a rule, from necessity. Our method of selling to them was, usually, to get a bid on the shipment of cattle from their buyer, if he was the first to look at the cattle, and then to try every other buyer on the yard, and if we could get any more than the canning Co.'s buyers offered us we would sell to other buyers; if not, then we would sell to the canning Co. or forward to some other market, whichever we thought was best to the interest of our customers; we made no difference.

Int'y ninth. If the def't, John Oneal, ever executed to Hunter, Evans & Co. any bill of sale, mortgage, or other written instrument to secure the plaintiffs in any amount, then you will please state fully and particularly any and every thing you know about the same, giving dates and other particulars. When & where was the
186 same executed? And state why you know def't Oneal executed the same; and, if you know, please state fully the object and purpose of the parties thereto; and, if any, what was the agreement or understanding by and between def't Oneal and the plaintiffs, Hunter, Evans & Co., with reference to the same; and, if you can, please attach a copy of the same to your answer hereto, properly identified; and if either of said parties about the same time executed to the other any other written instrument, state who executed the same, to whom was it executed, & to whom was it delivered, and when. Where is the original instrument? And if in the possession of the def't, John Oneal, then give the contents and date of the same.

Answer to ninth int'y. Def't Oneal gave our firm a bill of sale of his stock of his O N cattle, which I explained in my answer to interrogatory No. 2. I was not personally present when this bill of sale was executed, but I have seen and read it.

Int'y tenth. If the def't Oneal ever used, shipped, or otherwise disposed of any of the cattle included in the bill of sale or mortgage given by him to plaintiffs, Hunter, Evans & Co., and dated 21st day of August, 1879, then state when, where, to whom, how many,
187 of said cattle did he dispose of and the value thereof, and whether such disposition was with or without the knowledge or consent of Hunter, Evans & Co. If you ever had any conversation with def't, John Oneal, about disposing of any of said cattle, state when & where, and state fully all and everything he said about the matter.

Answer to tenth int'y. I saw the certificate of the inspector of brands of Van Zandt Co., Tex., showing that Oneal had ship-ed 95 or 96 cattle in the O N brand to Chicago, consigned to R. Shahan, after he (Oneal) had given us the said bill of sale for said cattle. These cattle were shipped to Chicago without the knowledge or consent of our said firm.

Int'y eleventh. If you ever had any conversation or conversations with the def't, John Oneal, about the claim of plaintiffs, Hunter, Evans & Co., against him, the same upon which this suit is brought, then state fully when & where such conversations were had and who was present. What if anything, did said def't, John Oneal, say about said claim? State fully and particularly, giving names, dates, and amounts, and if, in such conversation, anything was said about the amount of said claim and the justice of the same, then state fully any and every thing that was said, by whom, where,
188 when, who, if any one, was present.

Answer to eleventh int'y. During the last day of November, 1879, I had a conversation with Oneal about his indebtedness to us in our office, at the National Stock Yards, Ills. His indebtedness to us was, at that time, something over $18,000.00. He then admitted the justness and correctness of our claim against him and begged for time. He also begged us to pay a draft on us in favor of the City National Bank, Fort Worth, Texas; also offered us additional security if we would do so. We told him we were carrying him for all we wanted to, and told him to give the security to the bank and let them carry him for the amount he owed them. We also told him at that time that if he would give us a guaranty that he would promptly pay us his whole debt on or before the 1st of May, 1880, we would not take his cattle under our bill of sale. He said he would try to give us such guaranty. A. G. Evans, M. P. Buel, and F. W. Flato were present at this interview. Again, in the last days of January, 1880, I met Mr. Oneal by appointment at Marshall, Texas, for the purpose of securing from him a positive assurance in the way of bank acceptance to pay his indebtedness on the 1st of May, 1880. He refused to give
189 the additional security and said he could not pay until some time in the summer. I then made him a proposition to take a sufficient number of the cattle on which we had the bill of sale at prices to be agreed upon to satisfy our claim. He said he did not want to sell any unless he sold all. I asked him how many he had. He said about 4,000 or over. I then asked him

what he would take for his entire stock. He said $32,000, and he would gather them and deliver them at Will's Point or near there. I told him I would take them at that price if he would guarantee the number and would deliver them at Pilot Point, Texas. He refused to do that. I then told him if he would gather & deliver the cattle at Pilot Point, Texas, that I would give him $9 p'r head for everything from three-year-old- to yearlings and $18 per head for all of his 4-year-old beeves, which would have given him $10,000 more than he asked me for his entire stock, provided he had the number he claimed to have; all of which he refused, and I then refer-ed him to our house at National Stock Yards. During all our conversation at that time Oneal never disputed any part of his indebtedness to us nor intimated that anything in regard thereto was wrong.

L. W. Evans was present, and heard this conversation.

190 Int'y twelfth. If you know anything about def't Oneal turning over or delivering any cattle to def't, John Dawson, at or near Will's Point, in Van Zandt county, Texas, about the 22 day of May, 1880, then state how many and what cattle were so turned over or delivered, and give the value thereof. State fully and particularly any and every thing you know about the matter? Who, if any one, was present? And if any papers were executed at that time by any of the parties to this suit, then state the nature of said papers, and also tell who executed the same; tell what was said and done by the parties to this suit at the time; and if, after said cattle were so delivered to def't Dawson by def't Oneal, the latter disputed any part of the claim of Hunter, Evans & Co., then state fully and particularly when and what portion of said claim was so disputed, & by whom, and state the ground upon which the same was so disputed? Who was present? Was this before or after def't Dawson left Van Zandt county with the cattle? And if Oneal made any proposal to settle the same, state when, what he proposed, and in what way he proposed to pay it; and if Oneal said anything about having other cattle, then please state all and everything he did say, to whom, when, and in whose presence.

191 Int'y thirteenth. If you were present at Will's Point, Van Zandt county, Texas, on the 22 day of May, 1880, when certain papers were signed by def't Dawson, the City National Bank of Fort Worth, and Hunter, Evans & Co., then state all about said papers; give the nature of the same—who was present at the time; state all and everything that was said by each party about tne matter; also state the whereabouts of said cattle, and whose possession were they in, if any one, and what was being done with them at the time said papers were being prepared and signed; and if the def't Dawson said anything about having the papers that he was to sign prepared so that he could sign them and go, then state all and everything that he then and there said about the matter.

Int'y fourteenth. If there was any part of the claim of plaintiffs, Hunter, Evans & Co., against the def't Oneal not adjusted at the time Dawson left Van Zandt county with the said cattle, *and, if yea,* how much of said claim was not adjusted at that time? And state whether or not def't Dawson and the att'ys for the City National

Bank of Fort Worth knew of these facts at the time; state fully all and everything you know about the matter, giving names, dates, and other particulars.

192 Int'y fifteenth. If there was any portion of Hunter, Evans & Co.'s claim against Oneal that had not been secured by Oneal in accordance with agreements signed in Fort Worth at the time Dawson left said Van Zandt county with said cattle, then state how much of said claim was not so secured, and to whom, if any one, was this known; state fully, giving names, dates, and other particulars.

Int'y sixteenth. If Oneal made any proposition to arbitrate and settle said disputed claim of Hunter, Evans & Co. against him, then state when & where he made such proposition, who was present, what was the proposition so made; state fully any and every thing that was said and done about the matter; and if no arbitration was had of the matter, then state fully why.

Int'y seventeenth. If Oneal or his attorney or both were requested to secure said disputed amount, state when, where, by whom requested; state fully all that was said and done about the matter, and whether or not such security was given; and, if not, why not.

193 Int'y eighteenth. If you know anything about the seizure by the sheriff of Montague county of any cattle then in possession of Dawson or other persons at the instance and upon the suit of Hunter, Evans & Co., then state fully all and everything you know about such seizure; when and where was it made; what cattle were so seized; how many and the value thereof, if anything; what was being done with said cattle at and before the time they were so seized; how long were they held by said sheriff; to whom were they delivered; how many of said cattle were lost during the time said sheriff held the same; what was the value of the cattle so lost. State what became of said cattle, giving — full all that you know about the matter enquired about herein.

Int'y nineteenth. If you know, state the condition of Red River at the & during the time said cattle were held by the sheriff of Montague county.

Answer to interrogatories twelfth, thirteenth, fourteenth, fifth*teenth*, sixteenth, seventeenth, eighteenth, and nineteenth. I know nothing about these matters except from hearsay.

Cross-Int'ys Propounded by City National Bank & Dawson.

194 Cross-int'ys first. Are you acquainted with William Hunter, of Ft. Worth, Tex.? State if he is related to any of your firm and what connection has he with the firm of Hunter, Evans & Co., as agent or otherwise.

Answer to cross-int'y first. I am acquainted with William Hunter; he is my brother; he is and for several years has been the agent of our firm at Fort Worth, Texas.

Cross-int'y second. State if William Hunter was authorized to sign the name Hunter, Evans & Co. to an agreement made in Ft. Worth,

Texas, dated March 20th, 1880, between John Dawson, Hunter, Evans & Co., and the City National Bank.

Answer to cross-int'y second. I have read a copy of an agreement between Jno. Dawson, our firm, and the City National Bank of Fort Worth, and that is all I know about it. Wm. Hunter was fully authorized to sign this and any papers in our interest there.

Cross-int'y third. State if the said William Hunter had authority from your firm to sign the name of Hunter, Evans & Co. to an agreement made between John A. Oneal, Hunter, Evans & Co., & the City National Bank, dated March 20th, 1880, Ft. Worth, Texas.

Answer to cross-int'y third. Yes.

195 Cross-int'y fourth. Are you acquainted with Henry E. McCulloch, & how long have you known him?

Answer to cross-int'y fourth. No.

Cross-int'y fifth. Did not your firm introduce him to the City National Bank?

Answer to cross-int'y fifth. I don't know.

Cross-int'y sixth. State who your firm and the said City National Bank selected (if any one) to accompany the Dawson & Oneal cattle and receive the proceeds of the sale of said cattle.

Answer. I don't know; I was absent at the time.

Cross-int'y seventh. If you answer that Gen. Henry E. McCulloch was so selected state if you recommended the said McCulloch to the said City National Bank, and was he not accepted by them on your recommendation?

Answer. I never saw Mr. McCulloch and don't know.

Cross-int'y eight. Is it not true that on the 22 day of May, 1880, John A. Oneal delivered, at Will's Point, Texas, to John Dawson 1,741 head of cattle, of the value of $19,033.00?

Answer. I don't know.

196 Cross-int'y ninth. Did not Gen. McCullough, your agent, so notify you by letter? If so, please attach said letter or a copy thereof to your answer.

Answer. I have never seen such a letter from McCulloch.

Cross-int'y tenth. Did not Dawson execute and deliver his note for $19,033.00, payable to the order of Hunter, Evans & Co. and the City National Bank, for said cattle then and there delivered to Gen. Henry E. McCulloch, the agent of the said Hunter, Evans & Co. & the said City National Bank?

Answer. Don't know only from a letter from McCulloch to our firm, which I saw.

Cross-int'y eleventh. Did not the said Henry E. McCulloch, your agent, so notify you by letter? If so, please attach said letter or a copy thereof to your answer.

Answer. McCulloch's letter is attached.

Cross-int'y twelfth. Where is said note at the present time, and what disposition have you made of said note?

Answer. I never saw said note and don't know anything about it.

197 Cross-int'y thirteenth. Did not the said McCulloch notify you by letter that it was determined that the said John A.

Oneal was indebted to the City National Bank in the sum of $10,339.80, and the said Oneal admitted that he was indebted to Hunter, Evans & Co. in the sum of $9,915.75, and that the *pro rata* share of the $19,033.00 note was as follows: $9,317.22 to Hunter, Evans & Co., & City National Bank, $9,715.78?

Answer. I only know from McCulloch's letter.

Cross-int'y fourteenth. Please attach said letter or a copy thereof to your answer.

Answer. Letter is attached.

Cross-int'y fifteenth. Did not the said McCulloch, on or about the 22 day of May, 1880, notify you by letter that the said John Dawson had sold 253 cows and calves for $3,419.00 and sent you a draft for your *pro rata* share? If so, please attach said letter or a copy thereof as a part of your answer.

Answer. Yes; letter is attached.

Cross-int'y sixteenth. State if you received said draft; and, if so, the amount of said draft. State when you received and what
198 did you do with said draft and what disposition did you make of the proceeds.

Answer. I don't know, of my own knowledge; was absent at the time.

Cross-int'y seventeenth. Did not the said McCulloch, on or about the 26th day of May, 1880, notify you by letter that the said John Dawson had sold $1,842.00 worth of the Oneal cattle, and did he not send a draft of $1,842.00 to Hunter, Evans & Co., the proceeds of said sale, and did he not further notify you that your *pro rata* share of said sale was $902.12 & the City National Bank was $938.88, and did he not draw on you in favor of the City National Bank for $938.88, the bank's *pro rata* share of said sale?

Answer. I don't know. I did not see the letter. It was not in our office when I came home. I never saw the draft in favor of City National Bank.

Cross-int'y eighteenth. Please attach said letter or a copy thereof to your answer.

Answer. I don't know where the letter is.

Cross-int'y nineteenth. Did you receive said draft of $1,842.00; if so, when did you receive it and what disposition did you make
199 of the same? State if you paid the draft of the said McCulloch of $938.88 in favor of the City National Bank.

Answer. Oneal's statement shows a credit of am't of a draft, $1,842. I never saw McCulloch's draft in favor of City National Bank.

Cross-int'y 20th. Did you furnish or cause to be furnished to your agent, the said Henry E. McCulloch, a copy of the written agreement, dated Ft. Worth, Texas, March 20, 1880, executed by and between the said John Dawson, Hunter, Evans & Co., and The City National Bank and John Oneal, Hunter, Evans & Co., & The City National Bank?

Answer. All I know of agreement between Jno. Dawson, our firm, & City National Bank is, I've read of copy of it. I did know

of the agreement between Jno. A. Oneal, our firm, & said bank. I don't know whether a copy was furnished to McCulloch or not.

Cross-int'y 21st. If in answer to any of the direct interrogatories of plaintiffs you have stated anything from information or belief or hearsay please designate & specify what statements you have made from belief or from hearsay.

Answer. If in any answer to direct interrogatories I have
200 stated anything from hearsay I have so stated it then.

Cross-Int'ys Propounded to Hunter by Oneal's Att'ys.

Cross-int'y 1st. If you make any statements in answer to int'y 2 about any transactions, statement with reference to shipments, sale of cattle, or advances, state fully the date, who was present, and the place. If you make any statement about the matters in dispute, state fully your sources of information—persons present. If you say vouchers are in the possession of any one other than these pl'ffs, state how you know.

Answer. The whole transactions are shown in the statement attached to witness Buel's testimony. My sources of information are from personal interviews with def't Oneal, actual transactions of the business, our habitual custom of doing business, and the papers and letters attached to these & other witnesses' depositions. In regard to vouchers and other things pertaining to the business part of it, I refer to the depositions of our book-keepers.

Cross-int'y 2nd. If in answer to int'y 3rd you make any statement about interest thereon, state if you did not render to said Oneal monthly statements of advance sales, &c., and did you
201 not compute the interest each month upon such unpaid balance or advances, & was not said interest brought forward on each succeeding month by statement as part of the principal and interest computed thereon? If you say there are items of loss on New York shipments and you pretend to know anything about such loss, then explain how you know, & if you know from letters append them to your answer; if from conversation with anybody, say who—give time, place, date, & all persons present—& if you have any letters of Oneal's pertaining to said shipments append said letters to your answers. State, further, did not Hunter, Evans & Co., about the time of the New York shipment, above referred to, and about the time the loss about which you are testifying occurred, write from their office in East St. Louis a letter to John Oneal pertaining to said loss & to said New York shipments, if you have your copies of said letters; if yea, append copies thereof to this answer.

Answer. I have to refer to the evidence of our book-keepers. I was not at home at the time, and only know from the statement in evidence, which shows that we first charged Oneal interest on
202 Sept. 30, 1879. As to the N. Y. shipments I only know from hearsay.

Cross-int'y 3rd. If you paid shipments, did you do so on order—whose order? Append a copy thereof or the original order to your

answer. Was not Hunter, Evans & Co. instructed by Oneal to pay no money to shippers except upon Oneal's written order?

Answer. I only know we followed the usual custom in securing shippers.

Cross-int'y 4th. If you say you sold cattle belonging to Oneal consigned to Hunter, Evans & Co. for sale to the Beef Canning Co. or Beef Packing Co., state who were the stockholders in said concern, what were the purpose & object of said Co. Give the amount of stock owned by pl'ffs or either of them in said Co. State who were the officers of said Co., who was the secretary of said Co. State fully. If you say Oneal knew of such interest & knew of such sales, state fully how you know; if by letter, append the same hereto; if from conversation, state time, place, & persons present.

Answer. The stockholders of the Beef Canning Co., so far as I now remember, were H. S. Newman, N. C. Hudson, G. S. Ivy, W. B. Farr, A. G. Evans, and myself. There were many others,
203 whose names I cannot now recall. The purpose of the corporation was to pack and preserve beef and other meat for shipment to Europe and other countries. Plaintiffs as a firm owned no stock in this corporation, but I individually held about one-tenth of its stock and A. G. Evans individually about the same amount. The officers were H. S. Newman, pres't; N. C. Hudson, vice-pres't & treasurer; G. S. Ivy, manager, and A. G. Evans, secr'y. I told Oneal repeatedly that Capt. Evans & myself were stockholders in that concern. He certainly knew this fact at least a year prior to the year 1879, and he also knew we were selling some of his cattle to the said canning Co., because he was present on several occasions when they were sold.

Cross-int'y 5th. If, in answer to int'y 9, you state anything about the bill of sale, mortgage, or written liens, state fully if you are testifying from your own knowledge or what you heard others say. Give time and place & who was present. Append to this answer the original bill of sale, lien, or mortgage you testify about.

Answer. I have seen and read the bill of sale, but was not
204 present when it was executed. We have not the original now in our possession and don't know where it is, unless it is in the hands of our att'ys, in Texas.

Cross-int'y 6th. If you say Oneal ever ship-ed, used, or otherwise disposed of any of the cattle described in said written instrument, state how you know what cattle were embraced in said instrument & how do you know Oneal used, ship-ed, or disposed of them. Give the time, place, & the persons present when he so used, ship-ed, or disposed of them. If you state anything about a conversation with Oneal about using, ship-ing, or disposing of cattle, state all he said, who was present, & where was it.

Answer. I saw the certificate of the inspector of Van Zandt Co., Texas, and know from that that Oneal shipped 95 or 96 cattle of the O N brand to Chicago while we held bill of sale on the same. I also had a conversation with Oneal in our office at the National Stock Yards, some time in Nov., 1879, about this shipment. I showed him the inspector's certificate, and he did not deny having made

such a shipment. Capt. Evans & M. P. Buel were present at the time. This certificate is, I think, in the hands of our att'ys, in Texas.

Cross-int'y 7th. If in answer to int'y 12 you say that Oneal
205 did dispute a part of Hunter, Evans & Co.'s account after the cattle were turned over to Dawson, then state if Oneal did not dispute said account repeatedly & often & long before any cattle were turned over to Dawson. How do you know any cattle were turned over to Dawson; is it not true that Dawson did not receive the cattle, but that they were received by Hunter, Evans & Co. & the City National Bank of Fort Worth?

Answer. I don't know anything about the cattle being turned over; I was not present. Oneal never did dispute his account, or any part of it, while in conversation with me; I never heard that he questioned it till Feb'y or March, 1880.

Exhibits Attached to Answers of R. D. Hunter.

EXHIBIT "1."

EAST ST. LOUIS, ILL., *May* 27, 1879.

John A. Oneal, Esq'r., Will's Point, Texas:

DEAR SIR: Yours, 26th inst., to hand & note its contents. If you draw drafts from your place on stock shipped from Honey Grove & Terrell in your own name, & we charge such drafts to your account, we will pass all proceeds of cattle shipped by Oneal & Jones & Oneal & Moore to your credit, & note such credits in the statement
206 which we will render you monthly; at the same time will send you duplicate of sales and O. & J. *and O. & J.* original. We suggest this so you may enter such proceeds against us in your books at the beginning, & hope we will be able to keep matters straight.

Yo's truly, HUNTER, EVANS & CO.
FLATO.

Copy.

EXHIBIT "2."

EAST ST. LOUIS, ILL., *June* 12, 1879.

John A. Oneal, Will's Point:

DEAR SIR: Yours of the 10th inst. just to hand; contents duly noted. Our market has improved some since last week, though not sufficient yet to make shipments from Texas pay out. We sold 110 of your steers at 2.60 & 20 @ 2.75, and 42 head of Oneals & Co. @ 2⅝ and 20 head Oneal & M. @ 3⅛. We see no prospects for advances in prices unless cattle get fatter; could not sell but one car of them to shippers, but had to go to butchers & canning Co. We note your remark in regard to selling us cattle for Indian contract. We have purchased all the cattle we need for the present; may want few more in the fall. Enclosed please find statement of your account to

date, showing balance due us of $32,740.00; unless you intend shipping cattle immediately to cover this bal., we will have to ask
207 you to come up and give us note with bill — sale of the cattle that the money is invested in, so we can discount the note in bank.

It is impossible for us to carry over drafts for so large an amount, or we would not put you to the trouble of coming up to arrange the matter. Our Col. Hunter left — the Indian Territory last night, and will probably be absent a month or more.

Yours very truly, HUNTER, EVANS & CO.

A copy.

EXHIBIT "3."

EAST ST. LOUIS, ILL., *June* 18, 1879.

John A. Oneal, Esq., Will's Point, Texas.

DEAR SIR: Herein we enclose stat'ts, your own & Oneal & Atkinson's accounts, which we hope on examination you will find correct. You will find a draft of $2,500.00 charged in Oneal & Atkinson's acc't, which was made by W. Hunter for their account, & believe it was to cover draft matured at City Nat'l Bank, for which you had made no provisions & gone out West. W. H. can explain it fully.

Y'rs truly, HUNTER, EVANS & CO.

A copy.

EXHIBIT "4."

EAST ST. LOUIS, ILL., *June* 23, 1879.

John A. Oneal, Esq'r., Will's Point, Texas.

208 DEAR SIR: Enclosed find W. Hunter's account against you, for which he made d'ft for your acc't, $221.85. Please let us know whether this is all right & if we shall debit your acc't with same.

Your account being quite a large one & wishing to keep it straight & charge nothing to you except special instructions, we refer the matter for instructions.

Yours truly, HUNTER, EVANS & CO.
FLATO.

Copy.

EXHIBIT "5."

EAST ST. LOUIS, ILL., *July* 8, 1870.

Jno. A. Oneal, Esq'r., Will's Point, Texas.

DEAR SIR: Herein we enclose stat. — your account, Oneal & Atkinson acc't, & Oneal & Downing's acc't, all of which we hope you will find correct.

We have to-day charged your acc't $111.50, & c't Oneal & Downing's, which settles the cattle acc't. Shall we charge your acc't with W. Hunter's d'ft, $221.85, drawn by him for your acc'ts?

Yours truly, HUNTER, EVANS & CO.
FLATO.

EXHIBIT "6."

EAST ST. LOUIS, ILL., *Sept.* 6, 1879.

Jno. A. Oneal, Reed's Ranch, Texas.

209 DEAR SIR: We received your letter written at Palo Pinto on 1st inst., in which you state that you have bought of Merchant & McCoy 800 head of cattle and have drawn on us for payment to the amount of $17,250 six days after date. These drafts came in yesterday for acceptance, and not knowing just when the cattle would arrive here we declined to accept until we could ascertain if stock would be here in time to cover. We rec'd tel. from W. Hunter this a. m. saying cattle would arrive at Worth to-day and would be sent forward in three shipments, and on receipt of his tel. we accepted your drafts. Now, when you were here last the understanding was that you would not purchase any more cattle and that you would not make any more drafts on us until cattle you had already contracted should arrive at Fort Worth and was ship-ed after you left here, were all paid for, & that there would be no more drafts drawn until you returned from the West. On this shipment of cattle you drew about seven thousand dollars, and to-day we received letter from your man at Will's Point saying he had drawn on us for one thousand four hundred dollars at 30 days and
210 one thousand two hundred dollars at 15 days without saying what he was drawing for. This letter is signed Jno. A. Oneal, by Swain. These acceptances we will have to decline from the fact that we can't make any more advances on stock until they are ready for shipment; and in your letter to us of 29th ulto. you write that you leave A. B. Allen at Will's Point to attend to your business and that he would send us his signature, &c., which he has not done. We send this letter to one Mr. Sampsel, at Fort Worth, with instructions to carry it on to you, as we feel that it is important that you should know our feelings in this matter, and in conclusion will say that we will have to ask you not to make any more drafts on us under any conditions until the cattle are at shipping points and ready for shipments. We have been compelled to discount your 3 notes in Bank of Commerce. They will all have to be met at maturity. The first 10,000 falls due 21st inst. and the other two on 22nd this month and 22d Oct., and we trust your stock will be here in time to meet them. Our market is hard and cattle selling very low, but we hope for better prices next week, and if your 800 cattle are fat and have the weight they may pay out, but
211 for God's sake don't buy more, as we think you have enough already.

With our very best wishes for your success, we remain, your friends, truly,

HUNTER, EVANS & CO.

A copy.

EXHIBIT "7."

EAST ST. LOUIS, ILL., *Sept.* 9, 1879.

Jno. A. Oneal, Esq., Will's Point, Texas.

DEAR SIR: Your T. D. of to-day duly received: "Oneal West; will ship daily from Ft. Worth from this on; ship from here next week.—J. A. Oneal." The cattle now being shipped from Ft. Worth have all been paid for by us, but what we want to know is, What have you to come to cover those 2 drafts, am't'g to $2,700.00, referred to in our telegram y'day? We must decline to accept drafts, and can only pay drafts against shipment of cattle. We are aware of Mr. Oneal's being West is why we want to know what those 2 drafts are drawn against; hence our telegram of 6th inst.

Yours truly,

HUNTER, EVANS & CO.,
FLATO.

Copy.

Answers of Louis W. Evans to Interrogatories Propounded by Pl'ffs.

Answer to 1st int'y. My name is Lewis W. Evans; am 33
212 years of age. I am dealing in cattle; was in the employ of Hunter, Evans & Co., plaintiffs in this cause. In the year of 1879 acted as their agent and solicitor. I have no interest in this suit.

Answer to int'y 2. The first I knew about the matter was about the middle of December, 1879, when plaintiffs, Hunter, Evans & Co., made arrangements with me to go to Will's Point, Texas, and look after their interest in connection with def't Oneal. They showed me at that time a copy of the defeasance given by them to Oneal, and related to me all that was between them and Oneal.

Answer to int'y 3rd. Don't know anything about that.

Answer to int'y 4th. Don't know anything about that.

Answer to int'y 5th. I know pl'ffs, Hunter, Evans & Co., were engaged in the general live stock commission business at the Nat'l Stock Yards, Ill., during the year of 1879, and that during said time they sold a large number of cattle belonging to very many persons other than Oneal.

Answer to int'y 6th. I don't know anything about this, only from hearsay.

213 Answer to int'y 7th. I know pl'ffs sell cattle consigned to them for all they can get for them, as it is for their interest to do so, and from their mode of dealing I am satisfied they sold Oneal's cattle for all they could get for them.

Answer to int'y 8th. I know nothing about it.

Answer to int'y 9th. I know that def't Oneal executed a bill of sale of his own cattle to pl'ffs, Hunter, Evans & Co., because I saw the original bill of sale. I saw this bill of sale at Judge Watts' office, in Dallas, Texas. This bill of sale conveyed to pl'ffs all of Oneal's cattle branded O N then in Van Zandt and adjoining

counties, Texas. The instrument bore on its face the mark of the recorder. The defeasance was an instrument made by pl'ffs to Oneal declaring that should Oneal pay pl'ffs all he owed them, then the said bill of sale should be null and void; otherwise to remain in full force and effect; do not remember the exact date, but it was some time in the year 1879; the same was executed at National St'k Y'ds, Ill.

Answer to int'y 10th. I know that Oneal shipped to R. Strayhorn & Co., Chicago, 95 or 96 head of cattle in the O N brand, of which he had given Hunter, Evans & Co. a bill of sale. These
214 cattle were shipped the latter part of Sept., 1879. I saw the inspector, his books and certificates showing that these cattle were shipped at Will's Point, Texas, about the sixth or seventh day of May, 1880, on board of train between Will's Point and Terrell. I had a conversation with Oneal. He remarked to me that I had been sent there to watch him as though he was a damn thief. I replied if he had not gathered the 95 or 96 head of cattle and shipped to Chicago there would not have been anything about this. I told him that the firm had all confidence in him until he did this. He said he had to gather these cattle and ship them, as he needed some money.

Answer to int'y 11th. When I first went to Will's Point, in the latter part of December, 1879, to look after this matter Oneal did not dispute any part of pl'ffs' claim against him, and admitted the justice of it. Some time afterwards Oneal told me to write to Hunter, Evans & Co. and say to them that he had examined the account and was satisfied it was correct, except the loss on the New York shipment. This last conversation was, I think, the latter part of March, 1880. There was one $2,500.00 draft charged to him on the account which he did not remember to have drawn. He would
215 like to have them send the draft down so he could see it. He wanted to know in whose favor it was drawn. He was satisfied the draft was all right, but he did not remember who he had paid it to, and some time after that he said there was another $2,500.00 draft charges in the account, but he did not remember either of them. In the meantime I wrote to pl'ffs in regard to said draft, and they notified me that the drafts were drawn by W. Hunter — favor of bank at Ft. Worth, Texas. I told Oneal that the drafts were drawn by W. Hunter. He then said that W. Hunter had no right to draw drafts and have them charged to him. Some time afterwards I wrote to Ft. Worth and got certificates from the bank, showing that these two $2,500.00 drafts drawn by W. Hunter were placed to J. A. Oneal's credit. These certificates are in the hands of Judge Watts, pl'ffs' att'y. Some weeks after the conversation wherein Oneal admitted the correctness of pl'ffs' accounts I asked him several times to let me know how much of the account he admitted. I could get no satisfaction out of him. He said that he was in the hands of his attorney; that he had turned everything over to his attorney to settle several days before the cattle were ready to start and while
216 they were being delivered to Dawson. I went to Dallas to see Oneal's attorney and try to settle the amount of the ac-

count, but could get no satisfaction out of him. On the day the cattle were ready to start and after they had all been delivered to Dawson Oneal's attorney came up and disputed something over $8,700.00 of the account. He made up the $8,700.00 as follows, viz: the two $2,500.00 drafts drawn by W. Hunter; the interest account, amounting to about $1,700.00 too much, and he said there was no credit on plaintiffs' statement for the 120 head of cattle shipped by pl'ffs to New York, which he estimated at $2,000.00, and a few other small items paid shippers, etc.

Answer to int'y 12th. About the 15 day of May, 1880, Dawson commenced to receive the cattle from Oneal in bunches of 400 or 500 head, and branded them as he received them. About the 22 day of May, 1880, Oneal made his last delivery of cattle to Dawson, amounting in all to 1,741 head, nearly all in the O N brand. The amount that Dawson was to pay for these cattle was $19,033.00, and when they were all branded and ready to start Oneal's attorney, the attorney for the City National Bank of Ft. Worth, and Judge Watts all came to Will's Point to fix up the papers.

On that day Mr. Oneal's attorney disputed something over
217 $8,000.00 of pl'ffs' account. On same day there was a receipt given to Oneal by Judge Watts showing that cattle to the amount of $9,317.50 had been delivered to Dawson. There was also a similar receipt given by Mr. McCart, attorney for City National Bank of Ft. Worth, to Oneal for $9,715.00. Oneal's attorney claimed that Oneal had no credit for the 120 cattle shipped to New York, and estimated this shipment at $2,000.00. He also disputed the interest, amounting to about $1,700.00, and two drafts, $2,500.00 each, and several small items, aggregating to about $8,700.75. This was before Dawson left Van Zandt county with the cattle. Kirby, Oneal's attorney, then and there proposed to pay me enough cash to make (with cattle turned over to Dawson) $14,000.00; or, in other words, offered me $4,683.00 and call the account square. Judge Watts was present when this proposition was made. I told Kirby that I would submit this proposal to Hunter, Evans & Co. by telegram and would let him know next day. Next day I received a telegram from Hunter, Evans & Co. not to accept the proposition. Oneal's attorney, Mr. Kirby, then stated to me that Oneal had at least 1,000 more head of cattle besides those sold to Dawson. Judge Watts heard this conversation. It was in the hotel at Will's Point.

218 Answer to int'y 13th. Have answered to interrogatory No. 12 in regard to the nature of papers signed on May 22d, 1880, by City National Bank and Hunter, Evans & Co. Dawson was there for the purpose of signing certain papers, but do not remember having seen him sign such papers. Judge Watts, Mr. McCart, Henry E. McCulloch, and Mr. Kirby were present. The cattle were started the day these papers were prepared, and at the time the papers were signed, which was late in the evening—about dark—the cattle were encamped some four or five miles of Will's Point. I remember hearing Dawson say that he would like them to hurry and get the papers he was to sign ready, so he could sign them and go.

Answer to int'y 14th. Yes; about $8,700.00 of Hunter, Evans & Co.'- claim was disputed by Oneal at the time Dawson left Van Zandt county with the cattle. Yes; Dawson & attorney for City Nat'l Bank of Ft. Worth, Texas, did know of the Hunter, Evans & Co. disputed claim at this time, because they were present and heard Judge Watts, Kirby, and myself talking about it, and also talked with us about it.

Answer to int'y 15th. There was about $8,700.00 of Hunter, Evans & Co.'- claim against Oneal that had not been secured by
219 Oneal in accordance with agreement signed by him in Ft. Worth. At the time Dawson left Van Zandt county with the cattle this was known to Mr. McCart, Judge Watts, Mr. Kirby, and H. E. McCulloch. This was same day cattle were delivered.

Answer to int'y 16th. Oneal's att'y did make a proposition to settle the disputed part of Hunter, Evans & Co.'s claim against Oneal, and said that Oneal had 1,000 more cattle on the range that could be gathered in ten days, and he had plenty of other property to secure Hunter, Evans & Co. for the disputed amount. He proposed to pay enough cash, together with the cattle turned over to Dawson, to make $14,000.00, and if we did not want to accept that he would settle the matter by arbitration. He made this proposition at the hotel at Will's Point, Van Zandt county, Texas, on or about the 22 day of May, 1880. Judge Watts, Mr. McCart, H. E. McCulloch, myself, and several others were present. Mr. Kirby proposed for me to select a man and he would select another, and we set the following Saturday, May 29, 1880, as the day to arbitrate the matter. He selected a man, whom I accepted, and I selected three of the leading business men of Will's Point, & Oneal & his attorney rejected them one after another.

220 Answer to int'y 17. On Saturday, May 29th, 1880, Oneal and his attorney were both requested by Judge Watts to secure the said disputed amount of Hunter, Evans & Co.'- claim. This request was made in Mr. Oneal's store, in Will's Point. Oneal and his attorney refused to give the security, as they had agreed to do, and said they had no security to offer; that his property was all mortgaged for all it was worth.

Answer to int'y 18. On or about the 1st day of June, 1880, J. B. Sampsel and I filed a bond with the sheriff of Montague county, Texas, for the seizure of the O N cattle, then in the possession of John Dawson, who was at that time on the cattle trail leading from Texas to Kansas with said cattle. The sheriff of Montague county overtook — levied on the said cattle while they were encamped on the prairie some six or seven miles from Red River station, in Montague county, Texas; do not know how long the cattle were held by the sheriff, only from hearsay; don't know to whom they were delivered, except from hearsay; don't know how many were lost, but I do know that Dawson had the cattle driven to Polecat creek, I. T., near Caldwell, Kansas, and there sold the same some time in July or August, 1880. The cattle seized by said sheriff were cattle
221 in the O N brand; do not know the exact number, but there were about 1,350 head. Dawson had sold about $5,000.00

worth of the cattle, and the remainder—*i. e.*, those seized—were worth about $14,000.00.

Answer to int'y 19th. I know that Red River was very high at the time said cattle were seized by the sheriff of Montague county, Texas, and that some ten or twelve large herds of cattle were encamped there waiting for the river to fall. I saw the men and talked with them.

Answers to Cross-Interrogatories.

Answer to X int'y 1st. I am acquainted with W. Hunter. He is a brother of R. D. Hunter, senior member of the firm of Hunter, Evans & Co.. He is and has been agent for Hunter, Evans & Co., at Ft. Worth, for several years.

Answer to X int'y 2nd. Don't know.

Answer to X int'y 3rd. Don't know.

Answer to X int'y 4th. Am acquainted with H. E. McCulloch; first met him about 1st day of May, 1880.

Answer to X int'y 5th. Don't know.

Answer to X int'y 6th. H. E. McCulloch.

Answer to X int'y 7th. Don't know.

222 Answer to X int'y 8th. Yes.

Answer to X int'y 9th. Yes; letter attached.

Answer to X int'y 10th. Am not sure whether Dawson made one or two notes for the $19,033.00, nineteen thousand & thirty-three dollars, but said cattle were not delivered to Gen. H. E. McCulloch.

Answer to X int'y 11th. Don't know.

Answer to X int'y 12th. Don't know.

Answer to X int'y 13th. Don't know whether McCulloch notified the firm of these facts or not.

Answer to X int'y 14th. Don't know.

Answer to X int'y 15th. Don't know whether McCulloch notified the firm of these facts or not.

Answer to X int'y 16th. Don't know except from hearsay.

Answer to X int'y 17th. Don't know except from hearsay.

Answer to X int'y 18th. Have not the letter and cannot attach it.

Answer to X int'y 19th. Don't know except from hearsay.

Answer to X int'y 20th. I think I did, but am not certain.

Answer to X int'y 21st. I have so stated in my answers.

223 *Answers to Cross-Interrogatories Propounded by Oneal's Att'y.*

Answer to X int'y 1st. I have stated the facts as fully as I know them personally.

Answer to X int'y 2nd. Don't know.

Answer to X int'y 3rd. Don't know anything about it.

Answer to X int'y 4th. I know that my brother, A. G. Evans and Co., — R. D. Hunter owned some stock in the Beef Canning Co., and know that Mr. G. L. Jay was general manager, A. G. Evans, secretary; don't know if Oneal knew of this; cannot answer the other questions in this interrogatory.

Answer to X int'y 5th. Am testifying from my own knowledge, for I have seen the bill of sale and know Oneal's signature; can't attach, for I don't know where it is.

Answer to X int'y 6th. I do know the 95 or 96 head shipped to Strayhorn were in the O N brand covered by pl'ffs' mortgage. I have answered fully to interrogatory No. 10 all I know about the matter.

Answer to X int'y 7th. He did question a part of the account before the cattle were turned over to Dawson, but never disputed so much until the day the cattle were ready to start. I know
224 that these cattle were turned over to Dawson, because I was there and saw him receiving them and putting his brand upon them. Yes; Dawson did receive the cattle, & they were not received by Hunter, Evans & Co. & City Nat'l Bank of Ft. Worth.

(For Exhibit "A," attached to L. W. Evans' deposition, see next page.)

225 EXHIBIT "A."

John A. Oneal, Esq., in Acc't with Hunter, Evans & Co.

1879.			Dr.	Cr.
Feb'y	20	To cash y'r dr'ft	1,500	
	26	By pro. 56 cattle		1,730 19
		" rebate		30 00
		Balance	260 19	
			1,760 19	1,760 19
M'ch	1	By balance		260 19
	6	To cash p'd your d'ft	200 00	
	20	" bills pay'e, accept-d y'r d'ft due June 18, '79	3,141 00	
	28	" cash paid y'r d'ft	1,000 00	
	31	By pro. 21 cattle		644 50
		Balance		3,436 31
			4,341 00	4,341 00
April	1	To balance	3,436 31	
	4	" bills pay'e, accep'd your d'ft due May 1–3, '79	204 57	
	8	" cash p'd y'r dr'ft	1,300 00	
	14	" bills pay'e, accep. y'r dr'ft June 1–4, '79	3,659 85	
	18	" " " " " May 1–3, '79	2,525 00	
May	6	" " " " " June 15–18, '79	1,787 67	
	9	" " " " " July 4–7, '79	3,075 00	
	10	" " " " " June 5–8, '79	530 00	
	13	" cash p'd y'r dr'ft	1,000 00	
	"	" bills pay'e, accept. y'r dr'ft June 9–12, '79	1,305 44	
	14	" " " " " July 10–13, '79	2,113 60	
	15	" " " " " June 24–27, '79	408 00	
	"	" cash p'd shippers	5 00	
	17	" " for telegrams to Kelley Bros.	3 25	
	21	" bills pay'e, accept. y'r d'ft due June 4–7, '79	1,015 00	
	"	" " " " " " June 5–8, '79	1,500 00	
	23	" " " " " " June 14–17, '79	3,053 25	
	26	" cash p'd y'r d'ft	1,000 00	
	27	" " " " "	750 00	
	29	" " " " 2 " $1,000.00 & 500.00	1,500 00	

Exhibit "A"—Continued.

1879.			Dr.	Cr.
Apr.	9	By pro. 38 cattle		1,155 90
"	1	" " 104 hogs		602 52
May	5	" bills pay'e, error in ch'g'g accept-d		03
"	15	" pro. 39 cattle		1,027 30
		Am'ts carried forward	30,171 94	2,785 75
226				
1879.				
May	29	To am't bro't forward	30,171 94	
"	15	By " " "		2,785 75
"	26	" pro. 43 cattle, Oneal & Moore		756 35
	27	" " 43 "		748 13
	28	" " 23 " Oneal & Jones		428 08
	31	" " 41 "		856 02
		Balance		24,597 61
			30,171 94	30,171 94
June	2	To balance	24,597 61	
"	3	" cash paid y'r d'ft	700 00	
	4	" Oneal & Jones, bal. %	29 40	
	9	" ex'ge on Chi. draft	1 55	
	"	" cash p'd shipper	3 00	
	10	" bills pay'e, acc'p'd y'r d'ft due June 17, '79	4,171 11	
	"	" cash p'd y'r d'ft	4,135 46	
	11	" " " "	700 00	
	12	" " " "	1,162 72	
	14	" ex'ge on Chi. d'ft	5 00	
	17	" cash p'd y'r d'ft	3,213 96	
	"	" " shipper to Chi.	10 00	
	4	By pro. 42 cattle		743 84
	9	" " 63 " O. & J., by S., H. & L.		779 93
	11	" " 40 " "		908 92
	12	" " 20 " Moore		337 45
	"	" " 21 " Boland		280 75
	"	" " 20 " O. & M.		489 37
	"	" " 42 " Oneal		657 00
	"	" " 20 " "		397 60
	"	" " 20 " M. & B.		330 62
	"	" " 110 " Oneal		1,843 36
	17	" " 142 " "		2,474 98
	"	" " 140 " sold Chi.		2,763 22
	18	" " 19 " p'r Terrell		397 45
	"	" " 63 " " Worth		1,090 23
		Balance		25,235 09
			38,729 81	38,729 81
227				
1879.				
June	18	To balance per stat. rend.	25,235 09	
"	24	" cash p'd W. Hunter's d'ft	2,500 00	
	"	" " y'r 2 d'fts 1,150.00 & 900.00	2,050 00	
	26	" " "	1,000 00	
	27	" bills pay'e, accep'd d'fts due July 28, '79	2,708 02	
	"	" cash paid y'r "	2,681 48	
	28	" " shipper	2 00	
	"	" bills pay'e, accep'd y'r d'ft due July 27, '79	1,525 50	
	30	" cash paid "	1,800 00	

Exhibit "A"—Continued.

			Dr.	Cr.
1879.				
June	30	To Oneal's & Atkinsons' % for W. Hunter's d'ft, charged to their %, should have been drawn for Oneal's %	2,500 00	
	20	By bills rec., y'r 40-d. note, $10,000.00, less 33 d. int., @ 10%, due Aug. 2d, '79, 91.66		9,908 34
	"	" 60-d. note, due Aug. 22d, '79, $10,000.00, less 63 d. int., @ 10%, 175.00		9,825 00
"	"	" y'r 90-d. note, due Sept. 20, '79, $10,000.00, less 93 d. int., @ 10%, 258.33		9,741 67
	23	" pro. 78 cattle		1,421 77
	24	" " 44 " Oneal & Jones		725 78
	26	" " 63 "		1,155 11
	28	" " 169 "		3,585 12
		Balance		5,639 30
			42,002 09	42,002 09
July	1	To balance stat. rend.	5,639 30	
"	3	" bills pay'e, accep'd d'ft due Aug. 2,'79	4,004 18	
"	"	" cash p'd y'r "	1,909 50	
	5	" " " "	1,000 00	
	7	" " " "	1,410 00	
	"	" " " "	100 90	
	8	" Oneal & Downing %	111 50	
	"	" cash paid y'r d'ft	1,015 00	
	9	" " Newton's order on you	5 00	
	10	" " paid y'r dr'ft	2,500 00	
	12	" " " Ulhman	970 00	
	"	" bills pay'e, accep'd y'r dr'ft due July 18, '79	1,100 00	
		Carried forward	19,765 38	

1879.				
July	12	To am't bro't forward	19,765 38	
"	14	" cash paid y'r draft	4,845 00	
	15	" W. Hunter, his %	221 85	
	"	" cash paid your dr'ft	2,600 00	
	"	" " "	3,340 46	
	18	" " "	520 00	
	19	" " "	361 00	
	22	" " "	2,739 00	
	23	" " "	50 00	
	24	" " "	200 00	
	"	" " Johnson	2 00	
	25	" " y'r d'ft	886 00	
	"	" " "	2,347 00	
"	3	By pro. 63 cattle, O. & J.		1,324 98
	"	" " 155 "		2,563 41
	"	" " 21 "		335 95
	"	" " 129 "		2,374 21
	7	" " 66 "		1,052 44
	9	" " 125 " Oneal & J.		2,165 50
	"	" " 155 "		2,531 18
	"	" " 45 " O. & McM.		680 99
	10	" " 88 "		1,380 59
	11	" " 75 " Ulhman		970 00
	15	" " 236 "		3,716 43
	18	" " 24 " O. & Co.		246 78
	"	" " 147 "		2,373 64

Exhibit "A"—Continued.

1879.			Dr.	Cr.
July	18	By pro. 88 cattle, O. & J.		1,539 77
	"	" " 221 " "		3,192 89
	21	" " 103 " "		2,209 78
	24	" " 85 "		990 87
	28	" bills pay'e, error in cha'g'g accepted		3 00
	30	" 40 cat., Oneal		597 00
	"	" 105 " Oneal & Justice		1,682 30
	"	" 128 " Oneal & Moore		2,150 02
	"	" 64 " Oneal & Jones		1,059 50
		Balance		2,736 97
			37,878 20	37,878 20
229				
Aug.	1	To balance	2,736 97	
"	5	" cash p'd for hauling cripple- steer	1 00	
	8	" " W. Hunter, d'ft	8,898 25	
"	9	" " your "	1,003 00	
	9	" bills pay'e, accept. y'r " due Sept. 4, '79	7,000 00	
	11	" cash p'd for hauling cripple	1 50	
	"	" " Don Adams, ship'r	13 00	
	18	" " y'r d'ft	400 00	
	19	" " "	2,500 00	
	20	" bill- rec., y'r note due Aug. 22, '79	10,000 00	
	"	" " " " 2, "	10,000 00	
	"	" int. 18 d. on 18 days, 10,000.00 note, overdue	50 00	
	20	" cash p'd your d'ft	2,500 00	
	28	" " "	1,500 00	
	29	" " "	1,500 00	
	4	By pro. 342 cattle, O. & J.		4,915 51
	11	" " 313 " "		4,998 24
	"	" " 269 " "		3,751 57
	12	" " 41 " O. & M.		715 72
	13	" " 111 "		2,083 87
	19	" " 44 "		746 32
	20	" y'r 40-d. note, due Oct. 2, '79, $11,000.00, less discount, 131.40		10,868 60
	"	" y'r 60-d. note, due Oct. 22, '79, $11,000.00, less discount, 192.50		10,807 50
	21	" pro. 42 cattle		849 01
	"	" " 67 " O. & Justice		949 39
	25	" " 24 " Moore		263 25
	28	" " 24 " O. & Murphy		261 45
	"	" " 111 "		1,659 73
	29	" " 26 " Oneal & D.		124 15
	"	" " 24 " O. & Justice		257 15
	30	" Rebate on 227 cars, @ $10.00		2,270 00
		Balance		2,584 26
			48,105 72	48,105 72
Sept.	1	To am't to balance carried for'd	2,584 26	
230				
Sept.	1	To balance bro't forward	2,584 26	
"	"	" cash p'd McMiller. See O. letter	48 00	
	2	" " y'r d'ft	5,259 70	
	"	" " "	1,774 95	
	4	" " "	325 00	
	"	" " "	124 15	

Exhibit "A"—Continued.

1879.			Dr.	Cr.
Sept. 5	To bills pay'e, accept. — due Sept. 10, '79		17,251 15	
6	" cash p'd for telegrams		1 80	
16	" " " hauling cripple		1 50	
17	" bills pay'e, accept-d W. H.'s d'ft due Aug. 28, '79		6,724 41	
"	" cash p'd, W. H.'s d'ft		6,701 24	
20	" " y'r note		10,000 00	
26	" losses on 120 cattle shipped to N. Y.		665 99	
"	" cash p'd to shipper to "		16 00	
29	" " y'r d'ft		8,002 35	
30	" interest on %		50 00	
" 1	By pro. 201 cattle			3,894 07
2	" " 131 "			2,089 92
"	" " 133 "			2,236 91
"	" " 22 "			258 21
"	" " 48 " Moore			547 16
5	" " 23 "			280 99
10	" " 46 " Moore			687 75
12	" " 280 "			6,216 37
"	" " 292 "			4,653 60
16	" " 253 "			4,586 89
17	" cash sent by W. Hunter			6,641 36
24	" pro. 22 cattle			277 42
	Balance			27,159 91
			59,530 56	59,530 56
Oct. 1	To balance carried for'd		27,159 91	

231

1879.				
Oct. 1	To balance bro't forward		27,159 91	
3	" cash p'd y'r draft		277 45	
4	" bills pay'e, accepted y'r d'ft due Oct. 13		7,113 14	
"	" cash paid y'r note		11,000 00	
6	" " " McMiller		2 00	
7	" " " D. Blair		10 00	
13	" " " y'r d'ft		2,000 00	
15	" " " D. Blair		10 00	
18	" " " y'r d'ft		2,864 63	
21	" cash p'd y'r 3 d'fts, 597.08, 695.00, 4,000.00		5,292 08	
"	" " " McMiller		20 00	
23	" " " y'r d'ft		500 00	
24	" interest on %		196 08	
"	" cash p'd y'r note		11,000 00	
23	" " " for hauling crip.		1 50	
7	By pro. 400 cattle			7,848 52
"	" " 200 "			3,667 64
9	" " 183 "			3,377 45
10	" " 1 "			15 00
13	" Bird & Windham %			1,126 97
15	" pro. 340 cattle			5,945 70
17	" " 164 "			3,156 31
18	" " 83 "			1,525 03
21	" " 175 "			3,640 83
"	" " 83 "			1,534 82
"	" " 41 " Mason			942 35
"	" " 35 " Akins			468 68
22	" " 168 "			3,056 63
23	" " 1 " cripple			11 00

Exhibit "A"—Continued.

			Dr.	Cr.
1879.				
Oct.	23	By pro. 16 cattle, O. & Co.		236 52
	"	" " 176 "		2,886 14
	"	" " 67 " Gilliland		1,386 28
	"	" rebate 171 cars, @ $10.00		1,710 00
		Balance		24,910 97
			67,446 76	67,446 76
Oct.	24	To balance per stat. carried for'd	24,910 97	
232				
1879.				
Oct.	24	To balance bro't forward	24,910 97	
	"	" cash p'd y'r d'ft	5,443 09	
	27	" " " W. H.'s d'ft	1,006 34	
	28	" " " y'r d'ft	600 00	
	28	By pro. 70 cattle, 3 calves		1,099 22
	30	" " 48 "		662 75
	"	" " 21 "		424 80
		Balance		29,773 63
			31,960 40	31,960 40
Nov.	1	To balance	29,773 63	
	3	" cash p'd y'r d'ft	7,359 75	
	"	" " " " "	7,359 75	
	4	" " " " "	7,187 00	
	6	" ex'ghe on Chi.	16 00	
	7	" cash, C. Meldrum, 5.00; hauling, 3.00	8 00	
	"	" f't ch'g's to St. Louis on 14 cars for'd to Chicago	1,597 50	
	8	" cash, telegrams	2 35	
	10	" bills pay'e, accept. d'ft due Nov. 14, '79	1,100 06	
	12	" disallowal on 3 bruised cattle	20 00	
	17	" cash p'd McMiller, 5.00, 35.00	40 00	
	"	" " notary, ack'g't	25	
	25	" interest on acc't	278 41	
"	5	By pro. 292 cattle, O. & B.		6,709 90
	7	" " 168 " "		3,359 15
	"	" " 189 " O.		3,633 67
	"	" " 41 " O. & Co.		569 50
	"	" " 45 " O.		613 43
	10	" " 294 " "Chicago"		7,065 60
	"	" " 108 "		1,753 55
	"	" " 22 " Taylor		352 75
	11	" " 23 "		295 05
	17	" " 44 " O. & B.		772 16
	19	" " 202 "		3,385 42
	"	" " 209 "		3,606 41
	22	" " 46 "		654 50
	25	" rebate		1,020
		Am'ts carried forward	54,742 70	33,791 09
233				
1879.				
Nov.	25	To am'ts bro't forward	54,742 70	
"	"	By " " "		33,791 09
"	"	" com. on Transcontinental R. R. shipments		97 25
		Balance		20,854 36
			54,742 70	54,742 70

Exhibit "A"—Continued.

			Dr.	Cr.
1879.				
Nov.	25	To balance stat. rend.	20,854 36	
"	"	" error in cr., Oct. 21st	20	
	26	" cash handed you by Capt. E.	140 00	
Dec.	5	" " paid W. H.'s d'ft	652 53	
	23	" Oneal & Atkinson, bal. %	2 04	
	31	" int. on acc't	192 25	
1880.				
Jan.	31	" " "	158 96	
1879.				
Nov.	25	By error in cr., Oct. 24th		05
"	28	" commission on Terrell ship'ts		55 00
"	"	" cash for W. Hunter, % J. D. Reed		460 00
Dec.	1	" " coll'd I. M. R. R., damage claim		2,269 50
"	8	" net pro. 46 cattle		579 30
"	"	" rebate		20 00
		Balance		18,616 49
			22,000 34	22,000 34
1880.				
Feb'y	2	To balance	18,616 49	

234

1880.				
Feb'y	21	To balance bro't forward	18,616 49	
July	21	" cash p'd sheriff V. Z. Co., Texas, for gathering O N cattle	279 02	
	29	" cash p'd shipper with cattle	10 25	
Dec.	1	" interest on acc't	1,288 93	
Feb'y	2	By cash collected rebate on 6 cars cattle shipped to New York		120 00
"	20	By cash fr. Tex. P. R. R., damage claim		625 00
May	26	" " McCulloch's d'ft for part pro. 263 cows		1,668 49
June	25	" " McCullochs sent d'ft on M. & S.		1,842 00
July	24	" net pro. 84 cattle gathered by sheriff V. Z. Co. & shipped to us by Sampsel		1,309 50
Aug.	24	" pro. 112 cattle shipped and sold at Ft. Worth, Texas, being part of the cattle gathered by sheriff V. Z. Co., Texas		832 00
		Balance		13,797 70
			20,194 69	20,194 69
1880.				
Dec.	1	To Balance	13,797 70	

E. & O. E.
National Stock Yards, Ill., Dec. 1, 1880.

HUNTER, EVANS & CO.,
Per FLATO.

235 EXHIBIT "B."

(This exhibit is already copied in transcript as Exhibit "C" to original bill of pl'ffs.)

cattle he had bought and some of the cattle from his own ranch for the purpose of paying the aforementioned notes as they matured.

Defendant Oneal ship-ed cattle after his return to Texas, continued to make sight and other drafts on us, and also received advances from our agent, W. Hunter, at Fort Worth, Texas, until some time in the latter part of November, 1879, when defendant Oneal was again at our office. His indebtedness at that time to us was $20,854.36, twenty thousand eight hundred and fifty-four & $\frac{36}{100}$ dollars, which was shown to him, and to which he made no objections nor disputed any part of it. Defendant claimed at that time that he had lost heavily in buying and shipping cattle and asked us to carry him for his entire indebtedness to us until May, 1880, offering to give us additional security if we would pay a draft he had given on us in favor of City National Bank of Fort Worth, Texas, for the amount of about
241 ($9,600.00) ninety-six hundred dollars. We refused to pay the above-mentioned draft, but offered to extend the time on his indebtedness to us until May, 1880. Defendant was very desirous that we should pay said draft in favor of City National Bank, and offered additional security on real estate in Texas if we would pay it. We refused to do this, and advised him to give the City National Bank the real estate security, as we considered his indebtedness to us at that time as large an amount as we cared to carry him for.

During the month- of February and March, 1880, we made the defendant Oneal several propositions to take cattle he could gather and deliver to us of the O N brand, at certain prices for certain classes of cattle, in sufficient number to liquidate his indebtedness to us. Said offers were made for the sole purpose of effecting an amicable settlement of his account. All of these offers were rejected by the defendant Oneal.

On the 20 day of March, 1880, an agreement was made between John A. Oneal, Hunter, Evans & Co., and the City National Bank of Fort Worth, Texas, as copy of which is attached, marked "Exhibit B." At the time said agreement was made the defendant Oneal disputed a part of his indebtedness to us, and a provision was
242 made in said agreement whereby said defendant Oneal was to secure the plaintiffs, Hunter, Evans & Co., for such disputed amount by giving deed of trust on his other property, real or personal, said security to be given at the time of the delivery of the cattle by the defendant Oneal to John Dawson. At the time of the delivery of the cattle by Oneal to Dawson defendant disputed $8,700.75, eight thousand seven hundred & $\frac{75}{100}$ dollars, of his indebtedness to us. The cattle were delivered to Dawson, but defendant Oneal failed to give the security for the disputed part of our account against him as required in said agreement, whereupon we, plaintiffs, attached the cattle turned over to Dawson by defendant Oneal which were in the O N brand by a writ of sequestration. On May 20th, 1880, when this suit was brought, the defendant Oneal owed us $18,417.49, eighteen thousand four hundred & seventeen & $\frac{49}{100}$ dollars, or thereabouts. On December 1st, 1880, he owed us

$13,797.70, thirteen thousand seven hundred ninety-seven $\frac{70}{100}$ dollars, as per exhibit attached, marked "A."

Answer to int'y 3rd. We commenced to charge interest to defendant Oneal September 30th, 1879, on open account, at the rate of 10% per annum, as shown by Exhibit A. We charged none prior
243 to that date. Up to time this suit was brought we had charged Oneal ($875.00) eight hundred & seventy-five dollars interest. On December 1st, 1880, we charged him with $1,288.93, twelve hundred eighty-eight $\frac{93}{100}$ dollars interest on his account. We shipped 120 cattle, billed to J. F. Saddler & Co., New York, on or about September 12th, 1879, being a part of (14) fourteen cars, (280) two hundred & eighty cattle, shipped to us by defendant Oneal from Fort Worth, Texas. These 120 cattle could not be sold at over $2\frac{3}{4}$, two & three-fourth, cent- per pound, and believing it was defendant Oneal's interest to forward these 120 cattle to another market we did so at the time we had no instructions to forward them. We weighed the cattle and reported them to Oneal as 118 cattle, being sold @ 2.85, and 2 cattle @ $2.65 per 100 lb, as shown in account sale number 7360 rendered him for 280 cattle, dated September 12th, 1879, attached — copy Flato's testimony, marked Exhibit "Y." Soon afterwards we received a letter from Mr. Oneal, dated Jones county, Texas, about September 8th, 1879, in his own handwriting, in which he stated that if this particular shipment of cattle did not bring $3\frac{1}{4}$c. to forward them to New York or any other market except St. Louis. We acknowledged the receipt of said letter. A copy of our answer is hereto attached, marked Exhibit D, in which we
244 stated that we had forwarded 120 cattle, being same 118 cattle and 2 cattle referred to above, further stating that if the cattle netted out more than we reported to him in account sales we would credit his account with the difference, and if the cattle lost money from the amount reported to him we would charge the loss to his account. The 120 cattle lost ($665.99) six hundred & sixty-five & $\frac{99}{100}$ dollars, and this amount was charged to his account.

Answer to int'y 4th. When we forward cattle to other markets for our customers the proceeds of said cattle is sent us in drafts and exchange is charged by our bank for cashing such drafts, which amount of exchange we charge our customers. We forwarded cattle for Oneal several times, and when our banks charged us exchange for drafts received as proceeds of Oneal's cattle we charged Oneal's account with amount of exchange and no more. When forwarding cattle to other markets we put a man or men in charge to care for them while *en route* and pay them for such service, and charge the amount so paid to the owner of the stock. We charged Mr. Oneal with the amount so paid and no more.

245 Answer to int'y 5th. We were in the live stock commission business at the National Stock Yards, Illinois, in the year 1879, and sold about 80,000 head of cattle belonging to many different parties residing in all parts of the West. Oneal shipped us, during that time, between 10,000 and 12,000 cattle. It would be almost

EXHIBIT "D."

EAST ST. LOUIS, ILL., *Sept. 15th*, 1879.

Jno. A. Oneal, Esq., Will's Point, Texas.

DEAR SIR: We are just in receipt of yours of 8th inst., written in Jones county, but came too late, as the cattle arrived here on the 11th inst. We held them *at* @ 3.00, but could not get a buyer at that price; held them over until the next day, when we sold 40 h'd @ 2.90, 20 @ 2.65, & 100 @ 2.85, leaving us with 120 head, which we held @ 2.95, but there wasn't a man on the yard who would give it. Not having any instructions from you to forward them on another market, we concluded to weigh them up @ 2.85 & report them to you that way, but forward the cattle to New York & see what they would do there, and in the event it was not satisfactory to you we would shoulder the responsibility, and are now much pleased to receive your instructions to forward them to N. York. As soon as we receive the sales we will send them to you and credit or charge
236 you with the difference. They will strike N. Y. & be on that market on the 17th inst. We hope and trust they will net more than 2.85 here.

Yours truly, HUNTER, EVANS & CO.,
FLATO.

Copy.

EXHIBIT "E."

TERRELL, *May 24th*, 1880.

Mess. Hunter, Evans & Co., East St. Louis, Ill.

GENTLEMEN: As your Mr. L. W. Evans was on the ground and has kept you posted on all the matters pertaining to your interest here, I have not deemed it necessary to write you until now.

Mr. J. A. Oneal delivered Mr. J. M. Dawson a herd of cattle to-day, amounting in value to $19,033.00, for which I hold Mr. Dawson's note due, with 10 per cent. interest, payable as the cattle are sold. All parties interested being represented by their attornies, it was determined that your proportion of this sum should be $9.915.74 and that of the Bank of Ft. Worth should be $10,339.85. Mr. Dawson made a sale of 263 cows at $13.00 per head (cost) or $3,419.00, of which your proportion is $1,668.50, which I transmit herewith, less the premium on the exchange, in a sight draft on the Bank of
237 Commerce, St. Louis, Mo. The exchange, ½ per cent., is more than I expected to have to pay, but was the best I could do, either for St. Louis or New York. The herd is on the move and doing tolerably well. I find a lack of horses, but Mr. Dawson is buying as we move along. I hope to make it a safe trip to my employers: and, while I do not wish to encourage suspicion and doubt, I think it will require close watching. There has seemed to be a want of that open dealing that characterizes the transactions of the gentleman and a "holding with the herd while running with the hands" that does not meet my entire approbation. You will *here* from me occasionally on the trail.

Yours truly, HENRY E. McCULLOCH.

Answers of M. P. Buel to Interrogatories Propounded by Pl'ffs.

Answer to int'y 1st. My name is Menson P. Buel; am thirty-five years of age; am engaged in the live stock commission business, and partner of the firm of Hunter, Evans & Co., National Stock
238 Yard, Illinois, plaintiffs in this suit, and I have a fourth interest in this suit.

Answer to int'y 2nd. This suit is based upon business transactions between John A. Oneal and Hunter, Evans & Co. during the year 1879. An arrangement was made with defendant, Oneal, by plaintiffs, Hunter, Evans & Co., for the purpose of Oneal buying cattle in the State of Texas and shipping them to said Hunter, Evans & Co. at National Stock Yard, Illinois. We agreed to advance Mr. Oneal money for the purpose of buying and shipping cattle to us on his own account. Oneal went to the frontier of Texas early in 1879 and contracted a large number of cattle to be delivered to him during the season of 1879, and in so doing he made drafts on us, some at sight and some on time, which we paid and accepted, as shown in statement attached, marked "Exhibit A." Some time in June, 1879, we had advanced in cash and accepted drafts for Oneal a sum in the aggregate of nearly ($30,000.00) thirty thousand dollars. On June 20th, 1879, Oneal was in our office at the National Stock Yards, Illinois, and executed his three (3) promissory notes for ($10,000.00) ten thousand dollars each. Same three notes were credited to defendant Oneal's account on our book, less the
239 usual rate of discount, as is shown in our attached statement "A."

Defendant Oneal stated at the time that he would ship cattle to pay said notes as they matured. After defendant Oneal returned to Texas he notified us that cattle were not fat enough to ship and that he required additional advances to carry out his contracts with parties that he had contracted with for cattle. We continued to advance said Oneal by paying his sight drafts and accepting his time drafts until we had advanced him, in the aggregate, the sum of about $47,000.00, forty-seven thousand dollars.

In August, 1879, we requested Mr. Oneal to come to St. Louis. Mr. Oneal came and we notified him of the amount of his indebtedness to us. He expressed a willingness to give us security for his indebtedness, and on the 20 day of August, 1879, he executed his two promissory notes for $11,000.00, eleven thousand dollars, each, taking up (2) two of his first notes of $10,000.00, ten thousand dollars, each, leaving one of his unmatured $10,000.00, ten thousand dollar, notes unpaid; making an aggregate of thirty-two thousand dollars in notes due by him, for which, on August 20th, 1879, the defendant, J. A. Oneal, executed a bill of sale to us on his
240 stock of cattle and held in Van Zandt and adjoining counties, in the State of Texas, and delivered the same to us for the purpose of securing the amount of his indebtedness to us. Oneal had been shipping a great many cattle to us from Ft. Worth, Will's Point, and other places in Texas, on which he claimed he had lost money, and said that on his return to Texas he would ship us the

an endless task to tell to whom we sold Oneal's and the other cattle in 1879.

Answer to int'y 6th. We sold cattle for defendant Oneal at the National Stock Yards, Illinois, at various times to the St. Louis Beef Canning Company. We had no interest as a firm in the St. Louis Beef Canning Company. The Beef Canning Company was a corporation managed by a president, vice-president, and general manager. Defendant Oneal knew that we were selling his cattle to the St. Louis Beef Canning Company at times and never made any objections that I know of. He was present on several occasions when we were selling his cattle to said company, knew all about it, and never made any objections thereto.

Answer to int'y No. 7. There was no difference made by us in selling defendant's cattle and those belonging to other persons. We always sell cattle to buyers who pay the highest price. When
246 two buyers offer the same price we sell to buyer who first bid the price.

Answer to int'y 8th. We did not sell cattle belonging to defendant Oneal to the Beef Canning Company as a matter of choice, but always sold defendant Oneal's cattle to the best possible advantage. As the Beef Canning Company were slaughtering large numbers of cattle, they were often the best buyers for the class of cattle defendant Oneal was shipping.

Answer to int'y 9th. The defendant Oneal executed at plaintiffs' office on August 20th, 1879, a bill of sale to Hunter, Evans & Co. for his stock of cattle in the O N brands in Van Zandt and other counties in the State of Texas, the consideration therein being placed at ($22,000.00) twenty-two thousand dollars. The understanding was that if defendant discharged and fully paid his indebtedness to us the said bill of sale should be void; if not, to remain in full force and effect. An agreement to this effect was executed by us to defendant Oneal and delivered to him in our office, same being even date with the bill of sale, which bill of sale is now, I believe, in the hands of our attorneys. The other papers is, I presume, in the hands of defendant Oneal.

247 Answer to int'y 10th. I saw the certificate of the inspector of hides and animals of Van Zandt county, Texas, dated September, 1879, showing that defendant Oneal did ship to R. Strahan & Co., at Chicago, Illinois, 95 or 96 head of cattle of the O N brand. This shipment of cattle was made by defendant Oneal without our consent or knowledge. I talked with Oneal about the shipment of these cattle, in our office, the latter part of November, 1879, when he admitted that he had shipped the cattle referred to.

Answer to int'y 11th. Yes; I had several conversations with defendant Oneal at our office, about his indebtedness to us. He never disputed the amount of his indebtedness. We always furnished Oneal monthly statements of his account, and he well knew exactly how it stood. Capt. A. G. Evans and F. W. Flato, Jr., were generally present during our conversations. The last talk with him on the subject was during the latter part of November, 1879.

Answer to int'y 12th. I was not then at Will's Point, Texas.

Answer to int'y 13th. I was not at Will's Point, Texas, on May 22nd, 1880, and only know from letters and telegrams that
248 we received from Lewis W. Evans and *and* others of what occurred there.

Answer to int'y 14th. I know from a telegram received by us on May 24th, 1880, from L. W. Evans, that our account against defendant, J. A. Oneal, was all disputed except $9,915.74, nine thousand nine hundred & fifteen dollars & $\frac{74}{100}$ dollars, and that the disputed amount was $8,700.75, eighty-seven hundred $\frac{75}{100}$ dollars. I don't know whether defendant Dawson and the City National Bank of Fort Worth, Texas, knew these facts.

Answer to 15th int'y. I did not know at the time that defendant, John Dawson, left Van Zandt county, Texas, with the cattle, that Oneal had not secured the disputed part of our account, as per agreement made between Jno. A. Oneal, ourselves, and the City National Bank. See Exhibit "B."

Answer to 16th int'y. I know by a telegram we received from L. W. Evans of a proposition made by Oneal to settle with us by paying us $4,683.00 in cash in addition to the cattle delivered to Dawson, of which our proportion was $9,317.00. This proportion we declined to accept. The matter was not arbitrated.

Answer to 17th int'y. I know by hearsay that Oneal and
249 his attorneys were requested to secure the unadjusted part of our claim against Oneal.

Answer to 18th int'y. When our attorney and A. G. Evans were refused the security by Oneal and his attorney to cover the unadjusted part of our claim against defendant Oneal we then had the cattle seized by the sheriff of Montague county, Texas; don't know what number of cattle the sheriff seized nor the value; don't know how long the cattle were held by the sheriff; don't know how many were lost while in sheriff's hands. The cattle were replevied by defendant Dawson.

Answer to 19th int'y. Don't know the condition of Red River while the cattle were in the hands of sheriff.

Answers to Cross-Interrogatories.

Answer to X int'y 1st. I am acquainted with Wm. Hunter. He is a brother of R. D. Hunter, senior member of the firm of Hunter, Evans & Co., plaintiffs in this suit. Wm. Hunter is our agent at Fort Worth, Texas, and has been for several years.

Answer to X int'y 2nd. Wm. Hunter was authorized to sign our name as agent to any paper necessary in this transaction.

250 Answer to X int'y 3rd. I have seen a copy of an agreement between John Dawson, the City National Bank of Fort Worth, Texas, and ourselves; also saw an agreement between Jno. A. Oneal, the City National Bank, and ourselves, a copy of which is attached hereto, marked Exhibit B.

Answer to X int'y 4th. Yes; met H. E. McCulloch in July, 1880.

Answer to X int'y 5th. Don't know who introduced H. E. McCullough to the City National Bank.

Answer to X int'y 6th. Henry E. McCulloch.

Answer to X int'y 7th. Don't know.

Answer to X int'y 8th. McCulloch so advised us by letter.

Answer to X int'y 9th. Yes; McCulloch's letter is attached, marked Exhibit "E."

Answer to X int'y 10th. McCulloch so informed us in the letter attached.

Answer to X int'y 11th. Yes; the letter is attached.

251 Answer to X int'y 12th. Don't know where the note is now nor in whose possession it is; never saw it.

Answer to X int'y 13th. He notified us that it was determined that our proportion of the cattle turned over by Oneal to Dawson was $9,915.74, and that of the City National Bank $10,339.85. McCulloch did not advise us that defendant Oneal admitted that he was indebted to us in the sum of $9,915.74, and to the City National Bank of Fort Worth, Texas, in the sum of $10,339.85.

Answer to X int'y 14th. Said letter is attached.

Answer to X int'y 15th. McCulloch notified us by letter that Dawson had sold 263 cows for $3,419.00, and sent us draft for $1,668.50. The letter is attached.

Answer to X int'y 16th. We received a draft for $1,668.50 on or about the 26 day of May, 1880, and credited the same to the account of Jno. A. Oneal.

Answer to X int'y 17th. McCulloch notified us that Dawson had sold $1,842.60 worth of cattle in O N brand and sent us a draft for that amount, and said our *pro rata* of that amount was $902.12

252 and the City National Bank's *pro rata* was $938.88. McCulloch made a draft on us for $938.88, favor of City National Bank.

Answer to X int'y 18th. Cannot find said letter to attach it.

Aswer to X int'y 19th. We received a draft for $1,842.00; it was a time draft; we collected the amount and placed same to the credit of the defendant, Jno. A. Oneal; we did not pay McCulloch's draft for $938.88 in favor of City National Bank.

Answer to X int'y 20th. I do not know that McCulloch had a copy of the agreement made at Fort Worth, Texas.

Answer to X int'y 21st. When I have testified from hearsay in answer to interrogatorys I have so stated it in my answer.

Answers to the Cross-Interrogatories Propounded by Oneal's Att'ys.

Answer to X int'y 1st. In my answer to direct interrogatory No. 2, I have stated as fully as possible, and given dates and places where such interviews and transactions occurred; have also given source of information as fully as possible.

Answer to X int'y 2nd. We rendered Oneal monthly statements of his account, and computed interest on his account com-

253 mencing September 30th, 1879, and none before, and said interest was included on monthly balances brought forward

as part of the principal from said date. I answered fully in direct interrogatory No. 3 about the loss on the New York shipment, which was charged to defendant Oneal's account. I know that the amount of the loss on the shipment of cattle east was the difference between the valuation credit on our account sales rendered to John A. Oneal, "No. 7360," and the net proceeds of said 120 cattle, as evidenced by the account sale of J. F. Saddler & Co. We notified defendant Oneal of the loss upon this shipment by mail; also told him of it at our office some time after the shipment was made. A copy of our letter to him is attached, marked Exhibit D. The ac. sales — in our attorney's hands or Oneal's.

Answer to X int'y 3rd. Yes; we paid Oneal's orders. We were notified some time during the season of 1879 not to pay shippers without orders, except certain shippers named in the letters.

Answer to X int'y 4th. The Beef Canning Company is a joint stock company; don't know who all the stockholders were. The Beef Canning Company manufactured canned meets. We, as
254 a firm, held no stock in the Beef Canning Company. R. D. Hunter and A. G. Evans owned some of the stock individually; can't say how much. The officers of said canning company, in 1879, were H. L. Newman, president; N. C. Hudson, vice-president and treasurer; G. L. Joy, general manager, and A. G. Evans, secretary. Defendant Oneal knew that R. D. Hunter and A. G. Evans were stockholders in the St. Louis Beef Canning Company; he also knew we were selling his cattle to the Beef Canning Company, for he was present on several occasions when we sold his and other cattle to said company.

Answer to X int'y 5th. In answering direct interrogatory No. 9, I testified from my own knowledge. Capt. A. G. Evans, J. B. F. Sampsel, & F. W. Flato, Jr., were present at the time Oneal executed the bill of sale to us.

Answer to X int'y 6th. I know from the inspector's certificate that defendant Oneal did ship 95 or 96 head of cattle of the O N brand to Chicago, Illinois. Mr. Oneal admitted to me at our office that he had shipped said cattle. A. G. Evans was present at the time this admission was made in our office, in the latter part of November, 1879.

Answer to X int'y 7th. Never knew Oneal to dispute more
255 than $1,500.00 of our account before the cattle were turned over. This amount he disputed to Capt. Evans some time in February, 1880. The last time I saw Oneal he was in our office, during the latter part of November, 1879, at which time his account was shown him and fully talked over, and he disputed no part of it. I knew Oneal turned over cattle to Dawson from letters we received from H. E. McCulloch and L. W. Evans.

EXHIBIT "Y."

EAST ST. LOUIS, ILL., *Sept. 12th*, 1880.

No. 7360.

Account Sales of 280 *Cattle Sold for Account of Jno. A. Oneal, Ft. Worth, Texas.*

Cattle.	Purchaser.	Weight.	Dock.	Price.	Amount.	Total.
40	Jas. Cullen	41,810		2 90	1,212 49	
20	P. Rotchild	18,880		2 65	500 32	
98	A. Vogel	98,430		2 85	2,805 25	
2	----do	2,170		2 85	61 84	
Shipped { 118	F. W. Flato	119,420		2 85	3,403 47	
to N. Y. { 2	----do	2,000		2 65	53	
						8,036 37
Freight and back charges					1,540	
Yardage					70	
Hay					70	
Corn						
Commission					140	

Net proceeds credited in acc't.
Copy.
E. & O. E.

HUNTER, EVANS & CO.,
Per FLATO.

256 EXHIBIT "Z."

WILL'S POINT, TEXAS, *July* 21, 1880.

Received of J. B. Sampsel, ag't Hunter, Evans & Co., two hundred seventy-nine $\frac{02}{100}$ dollars in full payment for fees, wages, & gathering cattle in Oneal sequestration.

J. T. HAMM,
Sheriff V. Z. Co.

Answers of F. W. Flato, Jr.

Answer to int'y 1st. My name is Frederick W. Flato, Jr.; I am 26 years of age; am book-keeper for Hunter, Evans & Co., pl'ffs in this suit, and have been for three years.

Answer to int'y 2nd. This suit is based upon transactions between def't, John A. Oneal, and pl'ffs, Hunter, Evans & Co., during the year of 1879, in which pl'ffs advanced to the said def't Oneal large amounts of monies and in which def't Oneal shipped a large number of cattle to pl'ffs, which were sold for his account. A statement of all the transactions that occurred between the parties is herewith attached. The same was made by me from pl'ffs' books, and showes each and every item in the way they occurred, beginning Febr'y

20th, 1879, and ending December 1st, 1880. I carefully com-
257 pared each item with the entries on the books and know that this statement is correct in every particular. It is taken from our cash book, journal, sales book, and ledger, each of which are very large books, weighing from 10 to 20 lb, and each and all are still in the daily use of pl'ffs and absolutely necessary to their business. All sight drafts drawn by def't Oneal on the pl'ffs and paid by pl'ffs are charged cash paid his draft, and all time drafts drawn by def't Oneal on pl'ffs are charged bills payable, accepted his draft, and are so specified in the statement.

When men who came with def't Oneal's cattle to take care of them while in transit were paid any money for def't Oneal's account the items are charged as cash paid shippers, and are so specified in the statement. When pl'ffs sent def't Oneal telegrams or sent any other telegrams pertaining to def't Oneal's business the amounts so paid by pl'ffs were charged cash paid for telegrams, and are so specified in the statement. Accounts which were contracted for by def't Oneal and his several partners with pl'ffs and for which def't Oneal was responsible to pl'ffs were charged to def't Oneal's account, and are so specified in the statement. When pl'ffs forwarded cattle to Chicago or other markets for def't Oneal and the proceeds of such cattle were received by pl'ffs in the way of a
258 draft on New York or Chicago pl'ffs charged the def't Oneal with the same rate of exchange as charged by the bank and no more, and such items are so specified in the statement. When cattle were forwarded to other markets by pl'ffs for def't Oneal's account men were sent in charge of them to take care of them and were paid by pl'ffs for their services. Such amounts were charged to def't Oneal's account, and are so specified in the statement. When advances were made by pl'ffs' agent, William Hunter, Fort Worth, Texas, to def't Oneal the said agent, W. Hunter, would draw his drafts on pl'ffs for account of def't Oneal, and all such drafts paid by pl'ffs are so specified in the statement. The items charged July 12th, 1879, $970.00, was for proceeds of 75 cattle shipped by one Uhlman in def't Oneal's name, and the amount paid Uhlman, as the cattle belonged to Uhlman, and proceeds of same were credited to Oneal's account, as shown in the statement. The item charged July 15th, 1879, $221.85, was an account W. Hunter had against def't Oneal and sent to pl'ffs and charged to def't Oneal's account at his request. The item charged August 20th, 1879, $10,000, was def't Oneal's promissory note given pl'ffs June 29th, 1879, and placed to def'ts Oneal's credit on the last-named
259 date, less $175.00 discount, being interest at 10% per annum on said amount for 63 days. The other item of $10,000.00, charged the same day, August 20th, 1879, as bills receivable, your note due Aug. 2d, 1879, was def't Oneal's promissory note given pl'ffs June 20th, 1879, and placed to def't Oneal's credit on the last-named date, less $91.66 discount, being interest on said note for 33 days at 10% per annum. Both of the $10,000 notes were charged to def't Oneal's account on 20th of August, 1879, because he was at pl'ffs' office and said he could not pay the one which was already

due, August 2d, 1879, and the one which would mature August 22d, 1879; whereupon it was agreed to take def'ts Oneal'- 2 new notes for $11,000.00 each, thereby extending him longer time to pay and surrender to him the two above-named $10,000.00 notes. The items charged August 20th, 1879, was for interest on $10,000.00 note overdue 18 days at 10% per annum. The note matured August 2nd, 1879, but was not charged to def't Oneal's account until August 20th, 1879. This item of $50.00 interest was fully explained by me at the time to Oneal, and he assented thereto at the time and said it was all right. In some of Oneal's shipments there were some cripple- cattle left at the depot in St. Louis, Mo., and pl'ffs
260 had to pay extra for hauling such cripple- cattle to the National Stock Yards, Ills., and such items in the statement are charged for hauling cripple.

The item charged Sept. 20th, 1879, $10,000.00, is def't Oneal's promissory note given pl'ffs June 20th, 1879, & placed to his credit, less $258.33 discount, being 10% per annum interest on said note for 93 days. This note had been discounted at the bank by pl'ffs, and when matured Oneal could not pay it and pl'ffs had to pay it for him, which was done & charged to his account. The item charged Sept. 20th, 1879, as loss on 120 cattle shipped to New York, $664.99, is the loss on that number of cattle, being the difference between the amount credited def't Oneal with when we shipped them to New York and what they sold for net in New York. We fixed the amount of said credit arbitrarily at $2.85 per 100 lb for 118 cattle and at $2.65 per 100 lb for 2 cattle. This sum was fixed because pl'ffs considered them worth that sum here, though they could not be sold for *at* that sum here, & believing the cattle might realize more money by forwarding them to New York pl'ffs done so, however, not being instructed by Oneal to do so at the time. Pl'ffs concluded to weigh the cattle here and report them to Oneal as
261 118 head @ 2.85 and 2 head @ $2.65 per 100 lb, which was done per pl'ffs' ac. sales, # 7360, herewith attached, marked Exhibit "Y," and in the event it was not satisfactory to Oneal pl'ffs would shoulder the responsibility. This I know to be a positive fact, and I was present when pl'ffs had the conversation among themselves about Oneal's best interests in this particular lot of cattle. A day or two after the 120 cattle had been forwarded to New York pl'ffs received a letter from def't Oneal, written in Jones county, Texas, and dated September 8th, 1879, addressed to pl'ffs, in which he stated and requested pl'ffs that if this particular lot of cattle did not sell here for $3.25 per 100 to forward them to New York or any other market except St. Louis. Pl'ffs then acknowledged the receipt of that letter, a copy of which is attached to witness Buel's deposition and made a part of my answer. When pl'ffs received account of sales for the 120 cattle from J. F. Saddler & Co., who sold them, the net proceeds were $665.99 less than the amount placed to def't Oneal's credit in account sales # 7360 for 280 cattle, and the amount of loss was, of course, charged to def't Oneal's account. It is pl'ffs' custom to charge their customers with interest

on their open accounts when they overdraw their accounts.
262 Oneal was largely overdrawn after Sept. 1st, 1879, and interest was charged him accordingly on Sept. 30th, 1879, and each subsequent month, because his account was overdrawn, and such items are clearly shown in the statement. The item $11,000, charged Oct. 4th, 1879, was for def't Oneal's note paid by pl'ffs, being the same note credited to his account Aug. 20th, 1879, less $131.40 discount, being 10 per cent. interest per annum on said amount for 43 days. Oneal did not or could not pay this note when it matured, and pl'ffs, having discounted the same in bank, virtually were responsible to the holder of the note. Pl'ffs consequently paid the note and charged the amount to the def't Oneal's account. The item charged Nov. 7th, 1879, $1,597.50, is for freight and back charges on 14 cars, 294 cattle, shipped by def't Oneal from Fort Worth, Texas, to pl'ffs at National Stock Yards, Ill., and pl'ffs paid the freight and charges on said 14 cars to St. Louis, charged the same to def't Oneal's account, and forwarded the cattle to Chicago, Illinois. The account of sales rendered by pl'ffs to def't Oneal for the 394 cattle shows that the freight and charges therein charged is only
263 freight and charges between St. Louis to Chicago, Ill. The item $20, charged Nov. 12th, 1879, was a reclamation paid the purchaser of a lot of cattle belonging to Oneal, in which it was afterwards discovered that there was 3 cattle badly bruised. The item 25c., charged Nov. 17th, 1879, was amount paid notary—fees for an acknowledgment to a statement sworn to by Mr. Miller, one of Oneal's shippers, who testified about a delay and the handling of a shipment of def't Oneal's cattle by the Iron Mountain railroad. When items of errors occur they are amounts discovered by me as being erroneously posted, and are so specified in the statement. The item $140.00, charged November 26th, 1879, was cash handed def't Oneal by Capt. A. G. Evans while in St. Louis, Mo. Pl'ffs always rendered def't Oneal account of sale for the cattle shipped by him to pl'ffs for his account, and all proceeds of such sales were placed to the def't Oneal's credit on date of sale, and all such credits or proceeds of cattle are shown in the statement showing number of cattle and net proceeds thereof, & in many sales the names in which cattle were billed for better identification. Pl'ffs collected a rebate per car from the railroad company on Oneal's shipments, and all such rebates were placed to def't Oneal's
264 credit, as shown in the statement. The credit item of $6,641.36, Sept. 17th, 1879, was a remittance made to pl'ffs by their agent, Wm. Hunter, Fort Worth, Texas, for def't Oneal's account. The credit item, $1,126.97, Oct. 13th, 1879, was a balance due by pl'ffs to Byrd & Windon, and passed to credit of def't Oneal's account, who settled with Byrd and Windon for the same. The credit item, $97.25, Nov. 25th, 1879, was for a commission pl'ffs' agent — to give def't Oneal in compensation for his influence exercised in behalf of pl'ffs on the Transcontinental railroad and inducing shipments of cattle to pl'ffs' care by other parties outside of his own, and the credit item, $55.00, Nov. 28th, 1879, was for a sim-

ilar compensation on shipments from Terrell, Texas. The fact of division of commissions was learned by me from both pl'ff Hunter and def't Oneal; Oneal was present Nov. 25th, 1879, and the matter was talked over and fully understood. The credit item, $460.00, Nov. 28th, 1879, was remittance made by pl'ffs by their agent, W. Hunter, for def't Oneal's account, being amount collected from James D. Reed for cattle which def't Oneal had purchased from said Reed, but strayed back to Reed's ranch. The credit item,
265 $2,269.50, Dec. 1st, 1879, was amount collected by pl'ffs from the Iron Mountain Railroad Co. for a damage claimed for a lot of wrecked cattle belonging to Oneal. The item, July 21st, 1880, $279.02, was amounts paid by pl'ffs to the sheriff of Van Zandt county, Texas, for gathering O N cattle under a writ of sequestration, receipt for which is hereto attached, and marked Exhibit "Z." Item, July 29th, 1880, $10.25, was amount paid a shipper who came in charge of 84 cattle shipped to the pl'ffs, of the O N cattle gathered under the writ of sequestration. Item, Dec. 1st, 1880, $1,288.93, is interest on def't Oneal's account up to that date—up from Feb'y 2d, 1880, at 10 % per annum. The credit item, $120.00, Feb'y 6, 1880, is a rebate collected on a shipment of 120 cattle, 6 cars at $20.00 per car. The item, Feb'y 20th, 1880, $625.00, is a damage claim collected by pl'ffs from the Texas & Pacific R. R. Co. The item, May 26, 1880, $1,168.40, is a remittance made to pl'ffs by H. E. McCulloch, being a part of a sale of 263 cows by Dawson of O N cattle. The item, June 25th, 1880, $1,842.00, was a remittance to pl'ff- by H. E. McCulloch for a sale of O N cattle by Dawson. The item, July 24th, 1880, $1,309.50, is proceeds of 84 cattle shipped by Sampsel to pl'ffs, being part of the cattle gathered by the sheriff of Van Zandt county, Texas, under the writ of sequestration.
266 The item, Aug. 24th, 1880, $832.00, is proceeds of 112 head of stock, cattle shipped to W. Hunter, our ag't at Ft. Worth, Texas, by Sampsel, being the remainder of the O N cattle gathered by the sheriff of Van Zandt county under the writ of sequestration.

Answer to int'y 3rd. I have stated fully in my answer to interrogatory 2 all I know about interest charged by pl'ffs to def't Oneal's account; have also stated all I know about the New York shipment in my answer to interrogatory No. 2. I know the letter from Jones county, Texas, dated Sept. 8th, 1879, was in def't Oneal's handwriting, 'cause I saw the letter and am familiar with def't Oneal's handwriting. I have written to him and received from him many letters.

Answer to int'y 4th. I have answered this fully in my answer to interrogatory 2.

Answer to int'y 5th. Pl'ffs were commission merchants for the sale of live stock in the year 1879, and sold a great many cattle for a number of persons from all parts of the country, and also sold cattle for the def't Oneal. Pl'ffs sold def't Oneal's cattle to different buyers; to enumerate them all here would require a great deal of time.

267 Answer to int'y 6th. Pl'ffs had no interest in the St. Louis Beef Canning Co. as a firm. Def't Oneal knew that pl'ffs

sold cattle to St. Louis B. C. Co. as well as to other buyers. He never made any objections to pl'ffs' selling his cattle to the St. Louis B. C. Co., but, to the contrary, he, Oneal, always insisted upon the buyers of said company to buy his, def't Oneal's, cattle. Def't Oneal was present on several occasions when pl'ffs sold his cattle to the St. Louis Beef Canning Company.

Answer to int'y 7th. I never knew pl'ffs to make any difference in selling cattle—that is, they always sell every customer cattle for the highest prices they can get; I know this fact from their general course of dealing.

Answer to int'y 8th. I never knew of pl'ffs having sold any cattle to the St. Louis Beef Canning Company as a matter of choice, but when they sold to them it was because they were the best bidders.

Answer to int'y 9th. Def't Oneal was at pl'ffs' office on or about the 20th August, 1879, and being indebted to pl'ffs in a large amount of money he offered to secure them. He, def't Oneal, proposed to give pl'ffs a bill of sale for his stock of cattle in Van Zandt
268 and other counties in the State of Texas, which was accepted by pl'ffs, and such a bill of sale was then executed by def't Oneal to pl'ffs, Hunter, Evans & Co.. It was agreed upon the payment of said Oneal's indebtedness to pl'ffs, Hunter, Evans & Co., the bill of sale should be void, but if said indebtedness was not fully paid off and discharged that said bill of sale should remain in full force and effect. An agreement to that effect was executed by pl'ffs, Hunter, Evans & Co., to def't Oneal and delivered same to said Oneal, and think such an agreement is in possession of def't Oneal. I believe the agreement was of even date with the bill of sale.

Answer to int'y 10th. I only know by hearsay that def't Oneal disposed of some of the O N cattle; saw the inspector's certificate w-ere 95 or 96 head of O N cattle had been shipped by def't Oneal to Chicago, Ill.

Answer to int'y 11th. I have had several interviews with def't Oneal about his account and indebtedness to the pl'ffs, and on no occasion did he dispute the same or any part of it to me; on the contrary, he seemed satisfied that the account was correct. On one occasion he told me just to show him where he could borrow money enough to pay his indebtedness to pl'ffs; that he had paid
269 some $108,000.00 worth of property in Texas and would put up every dollar's worth of it to pay what he owed, showing me at the same time a list of property he owned and the value thereof; this was about the latter part of November, 1879, in pl'ffs' office; don't think that any one was present when this conversation took place.

Answer to int'y 12th. Can only say that I heard cattle were turned over to John Dawson by def't Oneal and by letter received by pl'ffs from H. E. McCulloch; don't know what was done only what I heard; don't know what part of pl'ffs' account Oneal then disputed.

Answer to int'y 13th. Was not present at Will's Point and don't know what occurred.

Answer to int'y 14th. Did not know there was any adjustment of the claim.

Answer to int'y 15th. Don't know anything about it.
Answer to int'y 16th. Don't know anything about it.
Answer to int'y 17th. Don't know.
Answer to int'y 18th. Don't know.
Answer to int'y 19th. Don't know.

Answer to Cross-Interrogatories.

270 Answer to X int'y 1st. The transactions occurred during the year 1879, at different times; dates shown in attached statement. I am the book-keeper for pl'ffs; made all the entries myself and know it from this source; some of pl'ffs were generally present when the transactions occurred; don't know of any vouchers other than those in possession of pl'ffs' attorney.

Answer to X int'y 2nd. The first item of interest considered by pl'ffs was June 20th, 1879, when def't Oneal executed his 3 promissory notes for $10,000 each. This item was as follows, viz: The notes drew no interest till maturity, and their present value was what they would discount for, and hence the discount was deducted from them. When Oneal's account was given this credit, said notes were placed to his credit in account less discount, which is 10% per annum for the respective number of days they were made payable in. The next item of interest is on Aug. 20th, 1879—$50.00 on def't Oneal's note—$10,000 being overdue at that time over 18 days. At the end of September interest was computed on his accounts for the first time, and so on each subsequent month, as his account was largely overdrawn. Besides the notes def't Oneal had given
271 pl'ffs, it is a custom to charge interest on accounts when they are overdrawn, and such interest is charged in the accounts once every month and carried forward in each balance brought down. I have answered fully as to New York shipment of cattle. I, as a book-keeper, sent Oneal statement of his acc't monthly. He never disputed such acc't until Feb'y, 1880.

Answer to X int'y 3rd. Pl'ffs paid shippers frequently on orders from Oneal and frequently by Oneal's letters requesting pl'ffs to do so when they are no orders. It was left to pl'ffs to pay shippers if they had any claim for such service, and such shipments were usually attended to by W. Hunter, pl'ffs' agent, when Oneal was not present, and sometimes pl'ffs paid shippers at request of some of def't Oneal's agent-, either by letter or telegram.

Answer to X int'y 4th. Pl'ffs, as a firm, held no stock in the St. Louis Beef Canning Co. I don't pay much attention to — the beef canning Co. make in changing their officers. I know, however, that H. L. Newman was president, G. L. Foy manager, and A. G. Evans secretary, in the year 1879. I know def't Oneal knew of the fact that his cattle were sold at times to the St. Louis Beef Can-
272 ning Co. because he was present on several occasions when they were sold.

Answer to X int'y 5th. I was present when the def't Oneal executed his bill of sale for his cattle in favor of pl'ffs, and also Capt.

A. G. Evans, M. P. Buel, and J. B. F. Sampsel were present. I am testifying from my own knowledge.

Answer to X int'y 6th. I saw the inspector's certificate in which it was shown that in the shipment of cattle Oneal made to Chicago, Ill., there were 95 or 96 cattle in the O N brand which he had given pl'ffs a bill of sale for.

Answer to X int'y 7th. Did not know Oneal disputed any part of pl'ffs' account until in Feb'y, 1880.

Deposition of A. G. Evans, Witness for Pl'ffs.

Deposition of A. G. Evans, a witness for pl'ffs, taken by and sworn to before S. N. Taylor, a notary public in & for county of St. Louis, State of Missouri, on the 24th of May, 1882.

Int'y 1st. Are you acquainted with the parties to this suit?

Answer. I am.

Int'y 2nd. Do you know any of the officers of the City National Bank, one of the defendants herein; if yea, which one, how
273 long have you known them, and where & what are their names?

Answer. I know two of them, to wit, Nichols, the president, and Britton, the cashier, of the bank, and have known them three years.

Int'y 3rd. Do you know anything about the debt due or formerly due by Jno. A. Oneal to the said bank; how it was created, and what, if any, connection the complainants, Hunter, Evans & Co., had with the creation or contracting of said indebtedness?

Answer. I do, and know that Hunter, Evans & Co. had nothing to do with contracting said debt. I have understood that said debt had its origin in a draft drawn by Jno. A. Oneal on Hunter, Evans & Co. I know that said Oneal had nothing due him from said firm of Hunter, Evans & Co., and for that reason it was not accepted or paid. Our firm was under no obligations to accept his drafts unless he had funds to his credit with us, and, as before stated, he had none.

Int'y 4th. Have you ever had any conversation with the officers of said bank respecting such connection by complainants with their demand against said Oneal? If so, state fully what & when.

274 Answer. They never claimed to me that our firm was liable for the actual debt.

Int'y 5th. Have you ever heard it claimed on the part of any of the officers of said bank that complainants were responsible in any way for their said debt against Oneal? If so, state it fully.

Answer. I never heard it claimed by any of the officers of said bank that the firm of Hunter, Evans & Co. were responsible or liable for said debt of Oneal.

Int'y 6th. Have you ever had with any of said officers any conversations respecting this case in which if any such claim as that mentioned in the last preceding interrogatory had existed the said officer would likely have said something about it? If yea, state when & where & why such mention would probably or pertinently have been made.

Answer. I have. In February, 1880, I was in said bank, at Fort Worth, Texas, and talked freely with Mr. Nichols and Mr. Britton about the Oneal debt to the bank, and also about Oneal's debt to Hunter, Evans & Co. In this conversation neither Mr. Nichols nor Britton stated or intimated that Hunter, Evans & Co. was liable to the bank in any way for the Oneal debt. The officers of the
275 bank never did claim in my presence that our firm was liable for the Oneal debt.

Int'y 7th. Do you know from any source the number of cattle delivered at Will's Point by Jno. Oneal to Jno. Dawson under the Fort Worth agreements; if yea, what source & what was the number?

Answer. At the time this suit was begun—that is, the replevin suit for the cattle—I did know the number and the classes of cattle delivered to Dawson by John A. Oneal, but I cannot now recall to memory the number or classes, as I made no record of it.

Int'y 8th. Of said number so delivered how many were in the O N brand, & how do you know?

Answer. I cannot state the numbers in any particular brand, for I have no memorandum of it and do not now remember.

Int'y 9th. How many of said brand were 2 years old, 3 years old, beeves, cows, calves, & bulls, & state your means of knowledge?

Answer. I cannot state.

276 Int'y 10th. Who furnished the counsel; who prepared the original pleadings in this case with the description of said cattle?

Answer. Louis W. Evans furnished such counsel, with the description of the cattle. He was at said time acting as agent for Hunter, Evans & Co. at Will's Point, and attended to the delivery of cattle to Dawson.

Int'y 11th. Was the description & numbers given in said petition & pleadings correct?

Answer. It was, to the best of my knowledge and belief.

Int'y 12th. If you have stated that your knowledge was derived from any contract or other writing state where said writing is, and if in your possession or subject to your control attach it to your answers and identify it.

Answer. I have not so stated.

Int'y 13th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully & at large in your answer.

277 Answer. I know of nothing, or at best recall nothing, now except this, that in February, 1880, when I was in the bank at Fort Worth both Mr. Nichol and Britton proposed to me to take the stock of cattle on which both Hunter, Evans & Co. and the said bank had chattle mortgages and for us to pay the bank the same *pro rata* per dollar on its debt that should be paid on our debt from the proceeds of the cattle, but I told them we would not do that be-

cause ours was a prior lien and we were entitled to have our debt paid first in full. They then proposed to have the cattle sold to some outside party and have the proceeds paid on the bank debt and the debt of Hunter, Evans & Co. *pro rata*, but I told them I would not submit to this, as our chattle mortgage was a first lien on the cattle.

Cross-interrogatories:

Cross-int'y 1st. Were you present when the original agreement or arrangement was made by which the City National Bank of Fort Worth became the creditor of John A. Oneal for advances made him; if so, where and when did it take place; was not an
278 agent or partner of yours present when it occurred?

Answer. I was not present when the agreement was made between O'Neal and the bank for the latter to make him advances, nor was I present when any such advances were made to him. So far as I know or have been informed there was no partner of the firm of Hunter, Evans & Co. present, nor was there any agent of theirs present when such assent was made.

Cross-int'y 2nd. Did you ever see the stock of cattle known in the papers of this case as the "O N" brand of cattle; and, if so, when and where? Do you make statements about it of your own knowledge or from hearsay?

Answer. I never saw the stock of cattle.

Deposition of W. Hunter, Pl'ffs' Witness.

Deposition of W. Hunter, a witness for pl'ffs, taken by and sworn to before Alpha K. Work, a notary public for Dallas county, Texas, on the 2nd day of June, 1882.

Int'y 1st. Are you acquainted with the parties to this suit?
279 Answer. I am acquainted with the parties to this suit.

Int'y 2nd. Where were you and in what business were you engaged in the year 1879, from April to Dec. 31st?

Answer. I suppose you mean in 1879. I was in Fort Worth, Texas, during the entire year of 1879, and was agent for Hunter & Evans, soliciting shipments of live stock to them at National Stock Yards in East St. Louis, Illinois.

Int'y 3rd. Did you, during said period, transact any business between complainants and Jno. A. Oneal? If so, state what business you so transacted.

Answer. Yes; I transacted some business for the defendant O'Neal with the plaintiffs, Hunter, Evans & Co. I made several advances to defendant on account of live stock shipments.

Int'y 4th. In the course of said business did you advance to said defendant on complainants' account any money; if so, how was the same advanced?

Answer. Yes; I advanced defendant several drafts at different times on account of stock shipments.

Int'y 5th. If you say said sums were advanced by your
280 drafts on complainants, state how many of such drafts you drew, in whose favor, for what amounts, and at what dates, and what you did with the money obtained upon said drafts, and your means of knowledge.

Answer to int'y 5th. I made, as agent for Hunter & Evans, drafts in favor of Oneal or to parties on his account, ten drafts, as follows:

Dates.	Favor of—	Amounts.	Order of—
May 20, 1879	J. A. Oneal	$3,053 25	Tidball, Van Zandt & Co.
" 30, "	Oneal & Co.	2,500 00	S. W. Lomax, cash'r.
June 20, "	J. A. Oneal	221 85	S. W. Lomax, cash'r.
" 21, "	J. A. Oneal	2,500 00	S. W. Lomax, cash'r.
Aug. 6, "	Oneal & Jones	8,898 25	S. W. Lomax, cash'r.
Sept. 15, "	J. A. Oneal	2,661 24	Tidball, Van Zandt & Co.
" 15, "	J. A. Oneal	4,040 00	Tidball, Van Zandt & Co.
" 15, "	J. A. Oneal	6,724 47	S. W. Lomax, cash'r.
Oct. 25, "	J. A. Oneal	1,006 34	Tidball, Van Zandt & Co.
Dec. 3, "	J. A. Oneal	652 53	S. W. Lomax, cash'r.

Said drafts are hereto attached and made a part of my answer and marked A for identification. The money on said drafts was placed to the credit of Oneal. I know this fact, because I made the deposits myself, and the endorsements on the backs of said drafts show the same fact.

Int'y 6th. What became of said drafts? Where are they now? If in your possession, state where you got them, and please attach them to your answers and identify them as exhibits thereto.
281 Answer. The drafts in question are attached hereto and made a part of these answers and marked A for identification. They were furnished me by Hunter, Evans & Co. The endorsements on the back show what became of the money.

Int'y 7th. If you know, then state what agent or agents the complainants had at Fort Worth during the year 1879 or during any portion of said year.

Answer. Hunter, Evans & Co. had no recognised agent at Fort Worth during the year 1879 other than myself. I was their only agent.

Int'y 8th. If you say that you was the agent of complainants at Fort Worth during the year 1879 state whether they had any other agent at Fort Worth during that times besides yourself, and also whether any other person done business at Fort Worth for complainants at any time during said year.

Answer. There were no agents other than myself representing or doing business for Hunter, Evans & Co. at Fort Worth during the year 1879 or any time during that year.

Int'y 9th. If any, state what connection complainants had
282 with the said City National Bank of Fort Worth with respect to the indebtedness of Oneal to said bank.

Answer. Complainants had no connection with the City National Bank of Fort Worth. Oneal checked on that bank on his own arrangements with them. When cattle were shipped drafts were drawn on Hunter, Evans & Co. to recover shipments.

Int'y 10th. If complainants bound themselves in any way to pay Oneal's indebtedness to said bank, then state fully and particularly all and everything you may know about the matter. When, where, & how did they bind themselves to pay O'Neal's indebtedness to said bank?

Answer. Complainants did not bind themselves to pay Oneal's indebtedness to the City National Bank of Fort Worth in any manner whatever.

Int'y 11th. If you were present at Fort Worth on March 20th, 1880, when certain agreements were made and executed by and between the parties to this suit, then state in what capacity you were there; and if as the agent of either of the parties, then state which party, and also state fully everything that was done and said by the parties at and prior to the execution of said agreements with respect to the matter.

283 Answer. I was present at Fort Worth May 20th, 1880, and as agent of Hunter, Evans & Co. assisted to draw up the agreement between the parties to this suit. On this occasion Oneal represented to me that he had cattle enough to secure the indebtedness of the City National Bank in brands outside of the O N brands. I do not remember all that was said in regard to the matter.

Int'y 12th. If you answer that you was the agent of complainants and acted for them in making said agreements, then state fully and particularly all and everything that induced you to enter into said agreement.

Answer. Upon representations of Mr. Oneal that he had cattle enough to secure the indebtedness to the City National Bank of Fort Worth in brands outside of the O N brands I was induced to enter into the agreement referred to, and also the promises of Oneal that he would secure any disputed account between Hunter, Evans & Co. and himself on delivery of cattle to Dawson.

Int'y 13th. If any of the officers or agents of said bank ever claimed that the complainants were bound to said bank for Oneal's indebtedness, then state fully when & where such claim was

284 made and by whom made; also state whether that claim upon the part of this said bank entered into the considerations that induced you to make said agreements.

Answer. Said bank nor any of its officers or agents of said bank did not claim that Hunter, Evans & Co. were liable to them for Oneal's indebtedness, but had secured themselves by a second mortgage on the stock, and the only reason that I as agent for Hunter, Evans & Co. consented to the agreement referred to was upon Oneal's assertion that he would turn in enough cattle in brands outside of the O N brands to make good both accounts.

Int'y 14th. If any one, who was your legal adviser in making said agreements? And if you say it was A. T. Watts, then state at what

time he went to Fort Worth upon that occasion and at whose request.

Answer. My attorney and legal adviser in making said agreement was A. T. Watts. He went to Ft. Worth on March 19, 1880, at my request.

Int'y 15th. What advise, if any, did said Watts give with regard to making said agreement-? And, if he advised against the making of said agreements, state fully what he said with respect to
285 the matter, who was present, and who, if any one, heard what he then said.

Answer. Mr. Watts advised against making said agreements at first. He did not think that Oneal had enough cattle to secure said indebtedness; that we had the first mortgage on the cattle, and were already secure in the matter. I do not remember all that he said. Britton, Dawson, & Oneal were present.

Int'y 16. If these respondents were present and heard what Watts said about making said agreements, then give the names of those who were present; and if anything occurred, please state fully and particularly all and everything that was then said and done, giving names and other particulars.

Answer. A. M. Britton, John Dawson, & John A. Oneal were present and heard what was said. If anything particular occurred I do not now remember it. I cannot give all that was said and done at the time.

Int'y 17th. If said Watts afterwards advised you to enter into the agreements, then state why he so advised you; and if you say that it was on account of representations as to the number of cattle
286 owned by Oneal other than those in the O N brand, then state fully and particularly what was said about the number of such cattle, by whom; and if any one was present and assenting thereto, state who it was; also any and every thing that was then & there said and done about the matter.

Answer. A. T. Watts afterwards, on account of the representations of Oneal that he could not have less than twenty-five hundred cattle outside of & not included in the O N brand, reconsidered and advised us to go into the agreement, on condition that Oneal would give security for the disputed portion of Hunter, Evans & Co.'s account against him. Britton, Dawson, & Oneal were present and assented to the agreement. I do not remember all that was said at the time.

Int'y 18th. If you was at Will's Point soon after certain cattle was delivered to Dawson by Oneal when an attempt was made to arbitrate and settle the disputed amount of complainants' account between them and Oneal, then state fully and particularly any and every thing that then & there occurred by and between the parties; also everything that was said by them, giving names, dates, and other particulars.

Answer. I was not present at the time referred to when an
287 attempt was made to arbitrate, and cannot tell what occurred.

Int'y 19th. If Oneal failed or refused to secure the disputed amount

of complainants' claim, then state when and where this occurred and any and every thing that was then and there said and done about the matter.

Answer. I was not present when Oneal refused to give security or arbitrate the matter, and can't tell what occurred.

Int'y 20th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer. I know of nothing further in the matter that would benefit either party to this suit.

Answers to Cross-Interrogatories.

Cross-int'y 1st. Did the considerations stated in the contracts or agreements signed by you for pl'ffs form any part of the consideration or inducement for entering into such contracts; were they
288 correctly stated in the said papers?

Answer. The consideration in the agreement, together with Oneal's statement in regard to the cattle not in the O N brands and the promises of Oneal to secure the disputed account, was my inducement for signing said agreement. As far as they went in the papers they were correctly stated, I believe.

Cross-in'ty 2nd. Were not plaintiffs in some instances interested, directly or indirectly, as purchasers in cattle sold by them for defendant Oneal?

Answer. They were not.

Cross-int'y 3rd. Were you not present and know of the delivery of the cattle by Oneal to Dawson and of their being driven by him out of the county, and did you not fail to make any objection thereto at the time—did you not consent to it?

Answer. I was not present. I did not know of said delivery. I did not know until afterwards about the cattle being driven out of the county, and did not consent to the same.

EXHIBIT "A," Attached to W. Hunter's Depositions.

289 $3,053.25 FT. WORTH, TX., 20 *May*, 1879.

Twenty-five days after date pay to the order of W. Hunter three thousand and fifty-three and $\frac{25}{100}$ dollars, being advance made for Hunter, Evans & Co. upon — head of cattle for account John A. Oneal, to whom charge this amount and deduct from net proceeds of sale of said cattle.

No. 55. June 14–17. W. HUNTER.

To Messrs. Hunter, Evans & Co., National Stock Yards, East St. Louis, Ill.

[Written across the face:] H. Accepted. Hunter, Evans & Co. (Endorsed:) W. Hunter. Pay E. C. Breek, cas., or order on collection for Tidball, Van Zandt & Co., bankers, Fort Worth, Texas. No. 678. Tidball, Van Zandt & Co., T. B. Moore, C. H. Wittington.

time he went to Fort Worth upon that occasion and at whose request.

Answer. My attorney and legal adviser in making said agreement was A. T. Watts. He went to Ft. Worth on March 19, 1880, at my request.

Int'y 15th. What advise, if any, did said Watts give with regard to making said agreement-? And, if he advised against the making of said agreements, state fully what he said with respect to
285 the matter, who was present, and who, if any one, heard what he then said.

Answer. Mr. Watts advised against making said agreements at first. He did not think that Oneal had enough cattle to secure said indebtedness; that we had the first mortgage on the cattle, and were already secure in the matter. I do not remember all that he said. Britton, Dawson, & Oneal were present.

Int'y 16. If these respondents were present and heard what Watts said about making said agreements, then give the names of those who were present; and if anything occurred, please state fully and particularly all and everything that was then said and done, giving names and other particulars.

Answer. A. M. Britton, John Dawson, & John A. Oneal were present and heard what was said. If anything particular occurred I do not now remember it. I cannot give all that was said and done at the time.

Int'y 17th. If said Watts afterwards advised you to enter into the agreements, then state why he so advised you; and if you say that it was on account of representations as to the number of cattle
286 owned by Oneal other than those in the O N brand, then state fully and particularly what was said about the number of such cattle, by whom; and if any one was present and assenting thereto, state who it was; also any and every thing that was then & there said and done about the matter.

Answer. A. T. Watts afterwards, on account of the representations of Oneal that he could not have less than twenty-five hundred cattle outside of & not included in the O N brand, reconsidered and advised us to go into the agreement, on condition that Oneal would give security for the disputed portion of Hunter, Evans & Co.'s account against him. Britton, Dawson, & Oneal were present and assented to the agreement. I do not remember all that was said at the time.

Int'y 18th. If you was at Will's Point soon after certain cattle was delivered to Dawson by Oneal when an attempt was made to arbitrate and settle the disputed amount of complainants' account between them and Oneal, then state fully and particularly any and every thing that then & there occurred by and between the parties; also everything that was said by them, giving names, dates, and other particulars.

Answer. I was not present at the time referred to when an
287 attempt was made to arbitrate, and cannot tell what occurred.

Int'y 19th. If Oneal failed or refused to secure the disputed amount

of complainants' claim, then state when and where this occurred and any and every thing that was then and there said and done about the matter.

Answer. I was not present when Oneal refused to give security or arbitrate the matter, and can't tell what occurred.

Int'y 20th. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer. I know of nothing further in the matter that would benefit either party to this suit.

Answers to Cross-Interrogatories.

Cross-int'y 1st. Did the considerations stated in the contracts or agreements signed by you for pl'ffs form any part of the consideration or inducement for entering into such contracts; were they
288 correctly stated in the said papers?

Answer. The consideration in the agreement, together with Oneal's statement in regard to the cattle not in the O N brands and the promises of Oneal to secure the disputed account, was my inducement for signing said agreement. As far as they went in the papers they were correctly stated, I believe.

Cross-in'ty 2nd. Were not plaintiffs in some instances interested, directly or indirectly, as purchasers in cattle sold by them for defendant Oneal?

Answer. They were not.

Cross-int'y 3rd. Were you not present and know of the delivery of the cattle by Oneal to Dawson and of their being driven by him out of the county, and did you not fail to make any objection thereto at the time—did you not consent to it?

Answer. I was not present. I did not know of said delivery. I did not know until afterwards about the cattle being driven out of the county, and did not consent to the same.

EXHIBIT "A," Attached to W. Hunter's Depositions.

289 $3,053.25 FT. WORTH, TX., 20 *May*, 1879.

Twenty-five days after date pay to the order of W. Hunter three thousand and fifty-three and $\frac{25}{100}$ dollars, being advance made for Hunter, Evans & Co. upon — head of cattle for account John A. Oneal, to whom charge this amount and deduct from net proceeds of sale of said cattle.

No. 55. June 14–17. W. HUNTER.

To Messrs. Hunter, Evans & Co., National Stock Yards, East St. Louis, Ill.

[Written across the face:] H. Accepted. Hunter, Evans & Co. (Endorsed:) W. Hunter. Pay E. C. Breek, cas., or order on collection for Tidball, Van Zandt & Co., bankers, Fort Worth, Texas. No. 678. Tidball, Van Zandt & Co., T. B. Moore, C. H. Wittington.

$2,500.00. FT. WORTH, TX., 30 *May*, 1879.

At sight pay to the order of S. W. Lomax, cashier, two thousand five hundred dollars, being advance made for Hunter, Evans & Co. upon 153 head of cattle for account of Oneal & Atkinson, to whom charge this amount and deduct from net proceeds of sale of said cattle.

No. 65. W. HUNTER.

To Messrs. Hunter, Evans & Co., National Stock Yards, East St. Louis, Ill.

(Endorsed:) Pay to the order of G. H. Goddard, Esq., cashier, for collection account of the City National Bank of Ft. Worth,
290 Texas. A. M. Britton, V. P. No. 8119. E. G. Moses, C. H. Wittington.

$221.85. FORT WORTH, *June 20th*, 1879.

At sight pay to the order of S. W. Lomax two hundred twenty-one $\frac{85}{100}$ dollars, being advance made for Hunter, Evans & Co. upon — head of cattle for account of J. A. Oneal, sundries paid out for him, to whom charge this amount and deduct from net proceeds of sale of said cattle.

No. 95. W. HUNTER.

To Messrs. Hunter, Evans & Co., National Stock Yards, East St. Louis, Ill.

(Endorsed:) Pay to the order of G. H. Goddard, cash'r, for collection account of the City National Bank of Fort Worth, Texas. S. W. Lomax, V. P. No. 8359. E. G. Moses, C. H. Wittington.

$2,500.00. FORT WORTH, TEX., 21 *June*, 1879.

At sight pay to the order of S. W. Lomax, cashier, two thousand five hundred dollars, being advance made for Hunter, Evans & Co. upon — head of cattle for account of J. A. Oneal, to whom charge this amount and deduct from net proceeds of sale of said cattle.

No. 101. W. HUNTER.

To Messrs. Hunter, Evans & Co., National Stock Yards, East St. Louis, Ill.

291 (Endorsed:) Pay to the order of G. H. Goddard, cash'r, for collection account of the City National Bank of Fort Worth, Texas. S. W. Lomax, cash'r. No. 8376. E. G. Moses, C. H. Wittington.

$8,898.25. FORT WORTH, *August* 6, 1879.

At sight pay to the order of Wm. Hunter eighty-eight hundred and ninety-eight $\frac{25}{100}$ dollars, being advance made for Hunter, Evans

& Co. upon 582 head of cattle for account of Oneal & Jones, to whom charge this amount and deduct from net proceeds of sale of said cattle.
No. 170. W. HUNTER.

To Messrs. Hunter, Evans & Co., National Stock Yards, East St. Louis, Ill.

(Endorsed:) W. Hunter. Pay to the order of G. H. Goddard, cash'r, for collection account of the City National Bank of Fort Worth, Texas. S. W. Lomax, cash'r. No. 8848. E. G. Moses, C. H. Wittington.

$2,661.24 FT. WORTH, *Sept.* 15, 1879.

At sight pay to the order of Tidball, Van Zandt & Co. twenty-six hundred & sixty-one $\frac{24}{100}$ dollars, being advance made for Hunter, Evans & Co. upon — head of cattle for account of J. A. Oneal, to whom charge this amount and deduct from net proceeds of sale of said cattle.
No. 231. W. HUNTER.

292 To Messrs. Hunter, Evans & Co., National Stock Yards, East St. Louis, Ill.

(Endorsed:) Pay E. C. Breek, cas., or order, for collection for Tidball, Van Zandt & Co., bankers, Fort Worth, Texas. No. 10245. Tidball, Van Zandt & Co. W. D. Harrison, tell'r. C. H. Wittington.

$4,040.00. FT. WORTH, *Sept. 15th*, 1879.

At sight pay to the order of Tidball, Van Zandt & Co. four thousand & forty dollars, being advance made for Hunter, Evans & Co. upon — head of cattle for account of J. A. Oneal, to whom charge this amount and deduct from net proceeds of sale of said cattle.
No. 230. W. HUNTER.

To Messrs. Hunter, Evans & Co., National Stock Yards, East St. Louis, Ill.

(Endorsed:) Pay E. C. Breek, cas., or order, for collection for Tidball, Van Zandt & Co. W. D. Harrison, tell'r. C. H. Whittington.

$6,724.41. FT. WORTH, *Sept. 15th*, 1879.

18907. Ten days after date pay to the order of S. W. Lomax, cashier, sixty-seven hundred & twenty-four $\frac{41}{100}$ dollars, being advance made for Hunter, Evans & Co. upon — head of cattle for account of J. A. Oneal, to whom charge this amount and deduct from net proceeds of sale of said cattle.
No. 229. W. HUNTER.

293 To Messrs. Hunter, Evans & Co., National Stock Yards, East St. Louis, Ill.

[Written across the face:] Accepted 9, 17, '79. Hunter, Evans & Co.

(Endorsed:) Pay to the order of H. L. Newman & Co. for collection account of the City National Bank of Fort Worth, Texas. S. W. Lomax, cash'r. No. 2282.

$1,006.34. FT. WORTH, *Oct.* 25, 1879.

At sight pay to the order of Tidball, Van Zandt & Co. ten hundred and six $\frac{34}{100}$ dollars, being advance made for Hunter, Evans & Co. upon 96 head of cattle for account of J. A. Oneal, to whom charge this amount and deduct from net proceeds of sale of said cattle.

No. 269. W. HUNTER.

To Messrs. Hunter, Evans & Co., National Stock Yards, East St. Louis, Ill.

(Endorsed:) Pay E. C. Breck, cas., or order for collection for Tidball, Van Zandt & Co., bankers. Fort Worth, Texas. No. 10614. Tidball, Van Zandt & Co. W. D. Harrison, teller. C. H. Whittington.

$652.53. FT. WORTH, *Dec.* 3*d*, 1879.

At sight pay to the order of S. W. Lomax, cash'r, six hundred and fifty-two $\frac{53}{100}$ dollars for ac. J. A. Oneal on 46 cattle, value received, and charge the same to account of—

No. 316. W. HUNTER.

To Hunter, Evans & Co., East St. Louis, Illinois.

294 (Endorsed:) Pay to the order of G. H. Goddard, cash'r, for collection account of the City National Bank of Ft. Worth, Texas. S. W. Lomax, cash'r. No. 10273. E. G. Moses, teller. C. H. Whittington.

Vouchers to Exhibit "A."

THE CITY NATIONAL BANK OF FT. WORTH,
FT. WORTH, TEXAS, —— —, 187–.

This certifies that on June 23, 1879, we received from Wm. Hunter his draft for $2,500.00 on Hunter, Evans & Co., East St. Louis, Ills., & that the same, less exchange, $12.50, was placed to the credit of Jno. A. Oneal, making $2,487.50.

S. W. LOMAX, *Cash'r.*

THE CITY NATIONAL BANK OF FT. WORTH,
FT. WORTH, TEXAS, —— —, 187–.

This certifies that on May 30, 1879, we received from Wm. Hunter his draft for $2,500 on Hunter, Evans & Co., East St. Louis, Ills., & that same, less exchange, $12.50, was placed to the credit of Jno. A. Oneal, making $2,457.50.

S. W. LOMAX, *Cas.*

TIDBALL, VAN ZANDT & CO., BANKERS,
FORT WORTH, TEXAS, *May* 25, 1880.

DEAR SIR: This is to certify that on May 20, 1879, we rec'd of W. Hunter his time draft on Hunter, Evans & Co., St. Louis,
295 our favor, for $3,053.25, and the proceeds of same, being $3,000, was applied in payment on check of J. A. Oneal, favor of J. D. Reed, on City Nat'l Bank for $3,000, said check having been refused at City Nat'l Bank.

TIDBALL, VAN ZANDT & CO.

Deposition of A. T. Watts, Witness for Pl'ffs.

Deposition of A. T. Watts, a witness for pl'ffs', taken by and sworn to before A. K. Work, a notary public of Dallas county, Texas, on the 23d day of June, 1882.

Int'y 1st. Are you acquainted with the parties to this suit?

Answer. I am acquainted with Col. R. D. Hunter and A. G. Evans; also with John Oneal, John Dawson, and Messrs. Britton and Lomax, of the City National Bank of Fort Worth.

Int'y 2nd. Where did you reside during the year- 1879 & 1880, and in what business or occupation were you then engaged?

Answer. I was residing in the city of Dallas, county of Dallas, during 1879 & 1880, and was then engaged in the practice of the law.

Int'y 3rd. If you was then engaged in the practice of the law, then state if you had anything to do with the matters
296 involved in this suit; also state how and when you became connected with same.

Answer. Messrs. Hunter, Evans & Co. placed the claim against Oneal for collection about the first of February, 1880. I had been spoken to previously by their agent about the matter. I mean the claim against Oneal involved in this suit.

Int'y 4th. If you had any conversation or conversations with respondent Oneal or any of the officers of the City National Bank of Fort Worth prior to the 20th day of March, 1880, with respect to the matters involved in this controversy, state when, where, and with whom such conversation or conversations were had; who, if any one, was present, and if either of the complainants were present and participated in such conversation or conversations state which one of them.

Answer. That some time during the month of February, 1880, Oneal and his attorney, J. C. Kirby, came to my office, in the city of Dallas, and there had a conversation with Col. A. G. Evans and myself about the matters involved now in this suit—that is, about the claim of Messrs. Hunter, Evans & Co. against John Oneal.

297 Int'y 5th. If prior to the 20th day of March, 1880, you and complainant, A. G. Evans, had a conversation or conversations with said John Oneal respecting the claim of Hunter, Evans & Co. against him, the same involved in this suit, then state when and where such conversation or conversations were had; state fully and particularly all *any* everything that was then and there said by

said Oneal in person or by any agent or attorney representing; give the name of such agent and attorney in regard to said claim, and the stock of cattle upon which a lien was claimed by complainants.

Answer. The conversation was had in my office some time in February, 1880. Oneal and his attorney, J. C. Kearby, came there to talk with Col. A. G. Evans & myself about the claim. Mr. Kearby did the most of the talking. Oneal told us then, as he did frequently thereafter, that the whole matter was in the hands of Mr. Kearby, and that whatever he said and done with respect to the matter would be all right. I do not remember all that was said in that conversation. Mr. Oneal and Kearby disputed the correctness of a portion of the claim and proposed to settle about $16,000 of the claim as correct.

298 Int'y 6th. If Oneal or his attorney in such conversation or conversations disputed any part of the claim upon which this suit was brought, then state specifically the item or items of said account so disputed; and, if any part of said account was then and there admitted to be just and owing, state what amount thereof was so admitted to be just.

Answer. Oneal and his attorney, J. C. Kearby, did dispute a portion of the claim—as I now remember, something over $2,000 of the claim. The items objected to was loss on shipments to New York and interest. I understood them as admitting that about $16,000 of the claim was correct.

Int'y 7th. If you had any conversation or conversations with any of the officers of said bank prior to March 20th, 1880, state when & where and with whom said conversation or conversations were had, and what, if anything, was said about the claim sued on and by whom, and, if any one was present, state who it was.

Answer. About the first of March, 1880, as I now remember, I had a conversation at my office with Mr. Lomax, of the bank, and
299 his attorney, Robert McCart; I think Col. A. G. Evans was present. We discussed the respective claims of Messrs. Hunter, Evans & Co. and that of the bank against Oneal; also their respective liens upon Oneal's property to secure their claims. We were threatening to sue upon Hunter, Evans & Co.'s claim and to foreclose the lien, and I take — that Mr. Lomax and his attorney came to see me with the view of coming to some understanding with us about the matter. There was considerable conversation about the respective claims against Oneal and the priority of the respective liens of Hunter, Evans & Co. and the bank.

Int'y 8th. If, in such conversation or conversations or at any other time, you ever heard any of the officers, agents, or attorneys of said bank claim or say that complainants were in any way bound to the bank for Oneal's indebtedness to it, then state fully and particularly all and everything that was said with respect thereto and by whom and where was it said; who, if any one, was present.

Answer. Neither Mr. Lomax or McCart, in that conversation or at any other time, claimed that Hunter, Evans & Co. were in any way bound for Oneal's indebtedness to the bank, nor did I at any
300 time here any officer, agent, or attorney of the said bank

make any such claim until long after this suit was brought, and, I believe, until after the bank had been made a party.

Int'y 9th. If you were present at Fort Worth on the 20th day of March, 1880, at the execution of certain agreements between complainants and respondents, then state in what capacity were you there. At what time did you arrive at Fort Worth and at whose request did you go?

Answer. I went to Fort Worth on the 20th of March, 1880, at the request of Wm. Hunter—rather in response to a message received from him. I must have arrived there about 3 o'clock p. m. At that time certain agreements were executed between complainants & respondents. I was there as the attorney or legal adviser of Messrs. Hunter, Evans & Co.

Int'y 10th. If you answer the foregoing that you were present at the time of the execution of said agreements as the legal adviser of said complainants, then please state fully, particularly, and minutely any and every thing that then and *any everything that then and* there occurred between the parties with respect to said agreements
301 and the subject-matter of the same, giving time, place, names, and other particulars.

Answer. When I arrived at Fort Worth I found John Oneal & his attorney, J. C. Kearby, Mr. Britton and Robert McCart, John Dawson and William Hunter. They had been discussing, so I learned, a compromise, or rather a settlement, of the claims of Hunter, Evans & Co. and the bank against Jno. Oneal. I was informed of the propositions of settlement, which were substantially the same as embraced in the several agreements executed by and between the complainants and respondents on that day. I promptly advised William Hunter, the agent of Hunter, Evans & Co., not to accept the compromise, stating that the lien of Hunter, Evans & Co. upon the O N stock of cattle was without any doubt the superior lien, and that they could not be benefitted by entering into the proposed agreements. My information then was that the O N stock constituted the great bulk of the cattle then owned by John Oneal. When I give this advice to William Hunter, Oneal, Kearby, Britton & McCart and John Dawson retired from the room where we had been discussing the matter, and after they had talked together for some time (the substance of that conversation was not heard
302 by me) they returned to the room where Hunter & myself were, and either Mr. Oneal or Kearby, one or the other, made the statement that of the other brands included in the deed of trust held by the bank there was cattle enough in number & value to quite or almost sufficient to satisfy and pay off the indebtedness of John Oneal to the bank. This statement was accepted and urged by Mr. Britton and, I think, McCart as a reason why Hunter, Evans & Co. should enter into the agreements, so as to settle the whole matter without the trouble and expense of litigation. I thereupon advised Wm. Hunter that, if these statements were true as to the number and value of the cattle in the marks and brands referred to, *that* I could not see how Hunter, Evans & Co. could loose anything by entering into the agreements; to which he, in substance,

replied that he had no reason to doubt the truth of these statements; and thereupon the agreements were prepared and signed.

Int'y 11th. Who was there present representing complainants, who was representing said bank, who was representing said Oneal, who was representing John Dawson?

Answer. William Hunter was there, representing Hunter, Evans & Co., as agents, and I was there as their legal adviser;
303 John Oneal was there in person & J. C. Kearby was present as his legal adviser; Mr. Britton was there, representing the bank, with Robert McCart as his legal adviser; John Dawson was present in person, and seemed to look to Mr. McCart for advice.

Int'y 12th. If you advised complainants to make said agreements, then state why you so advised, and if such advice was based upon anything that was then and there said by any of the parties to said agreements, then state fully and particularly what it was, by whom said, and who was present.

Answer. I first advised against Hunter, Evans & Co.'s going into the arrangement, but upon Oneal and Kearby's statements as to the number and value of the cattle included in the deed of trust held by the bank other than the O N stock, which statements were accepted and urged by the other parties as a reason why the arrangement should be made, I advised William Hunter that if these statements were true that complainants could not loose but very little by going into the arrangement. My recollection is that both Mr. Oneal & Kearby stated that there was cattle sufficient in number and value included in the deed of trust to the bank, other than the
304 O N stock, almost or quite sufficient to pay off and satisfy Oneal's indebtedness to the bank. These statements were urged by the representatives of the bank as a sufficient reason why Hunter, Evans & Co. should go into the proposed arrangement. The cattle of Oneal, as I understood from all parties, were scattered over a large, or, rather, an extensive range, and by the proposed arrangement he was to gather and deliver them to John Dawson.

Int'y 13th. If, prior to the execution of said agreements, any representations were made as to the number of cattle owned by Oneal not in the O N brand, but included in the lien held by the bank, then state fully all that was then and there said about the matter. When and by whom was it said, who was present, and what, if you know, caused such representations to be made?

Answer. I first advised against William Hunter's going into the proposed arrangement. The other parties then retired from the room, and, after consulting together for some time, they returned; then it was that Oneal & Kearby made the statement that there was cattle enough in number and value, included in the deed of trust held by the bank and not in the O N brand, to almost or quite satisfy the claim of the bank against Oneal. At that time there was present John Oneal, J. C. Kearby, Robert McCart, Mr. Britton,
305 and, I think, John Dawson, besides Wm. Hunter & myself. I presume the representations were made for the purpose and with the intention of inducing the agent of complainants to enter

into the proposed agreement; at least, such was the effect of these statements.

Int'y 14th. If you know, then state what induced the complainants to enter into said agreements; if it was on account of any representations made by said Oneal or his agent or attorney or said bank or its agents or attorneys, then state fully and particularly what such representations were, by whom made, who was present at the time. State particularly all that was said and done by the parties with respect to that particular matter.

Answer. I advised William Hunter not to go into the proposed arrangement; thereupon Oneal, Britton, Dawson, Kearby, and McCart retired from the room where we had been talking, and after consulting together for some time they returned to the room and either Oneal or Kearby, and probably both, represented to William Hunter and myself that there was a large number of cattle belonging to Oneal not included in complainants' lien, but were included in the deed of trust held by the bank; that there was very
306 nearly if not quite enough of these cattle in number and value to pay Oneal's indebtedness to the bank; these statements were urged by Mr. Britton and McCart as a sufficient reason to induce us to enter into the arrangement, which would avoid litigation and the trouble and expense of gathering the cattle, which were then scattered over an extensive range. I thereupon advised William Hunter that if these statements were true that Hunter, Evans & Co. could not loose but very little by entering into the proposed arrangement. He replied that he had no reason for doubting the truth of these statements as to the number and value of the cattle not included in the lien of complainants, and thereupon agreed to the proposed arrangements. The several agreements, copies of which are on file in this suit, were then prepared and executed. I cannot give the exact language used in the conversation, but the substance was as given above.

Int'y 15th. Who prepared said agreements, by whom were they signed, and who, if any one, attested them as subscribing witnesses? Were they all made and signed at the same time? How many and what were said agreements, by whom signed, and when & where signed? Give the date of each agreement and the parties thereto.

Answer. Messrs. Kearby, McCart, & myself prepared the
307 several agreements. One of them was signed by John Oneal, Mr. Britton for the bank, William Hunter for Hunter, Evans & Co.; another was signed by William Hunter for Hunter, Evans & Co., by Mr. Britton for the bank, and John Dawson; another, if I remember correctly, by John Dawson and John Oneal. Mr. Kearby & myself signed as subscribing witnesses, and I believe that Mr. McCart signed some, if not all, the agreements also as a subscribing witness. All of the agreements were prepared and signed at the same time and place, and each bears date March 20th, 1880.

Int'y 16th. If between the time of the execution of said agreement at Fort Worth and the delivery of the cattle to Dawson at Will's Point any effort was made to determine and settle the difference between complainants and Oneal with respect to the amount

really due upon said account, *if yea* state when & where and by whom such efforts were made and the result thereof.

Answer. Before the several agreements were signed at Fort Worth there was an understanding between Oneal and myself that he should come to Dallas and we would come to an understanding as to the amount of Hunter, Evans & Co.'s claim against him. He never came, but sent his agent; but we could not get Mr.
308 Kearby to work with us upon the accounts, so the agent returned to Will's Point without our being able to accomplish anything.

Int'y 17th. If you were at Will's Point, Van Zandt county, Texas, to wit, May 22d, 1880, at the time Oneal delivered certain cattle to Dawson, then state why and in what capacity you were there.

Answer. I was at Will's Point at the time the cattle were delivered by Oneal to Dawson. I was there as the attorney of Hunter, Evans & Co.

Int'y 18th. If you answer the foregoing that you were at Will's Point at the time of the delivery of the said cattle by Oneal to Dawson, then state the day of the week and what time of the day such delivery was made; also state fully and particularly all and everything that occurred at that time with respect to said cattle and the contracts and agreements by and between the several parties to this suit.

Answer. I was there. It was on Saturday. The cattle, as I understood from the parties, were delivered some two or three miles south of Will's Point. I did not see the cattle delivered. I don't know who was present at the delivery. We were not notified until after the delivery had been made. My understanding was
309 that the cattle were delivered before noon. They were then driven out some five or six miles northwest of town, & John Dawson returned to Will's Point in the afternoon that the proper papers might be made up and signed. He was very solicitous to get back to the herd, and frequently requested that the papers that he was to sign should be prepared so that he could sign and return to the herd. About that time Oneal, without any previous intimation, disputed about $8,500 of the claim of Hunter, Evans & Co. against him. Previous — that time he had proposed to settle about $16,000 of the claim, and from frequent conversations with him & Mr. Kearby I had been induced to believe that they only questioned about $2,000 of the claim. We immediately went to work preparing the proper papers, and prepared those that it was necessary for Dawson to sign. He signed them and returned to the herd. I then commenced the preparation of a deed of trust from Oneal to Hunter, Evans & Co. to secure them in the amount of the disputed claim. When I called upon Mr. Kearby for a description of the property to insert in the deed he then informed me that it was impossible for him to then give me the description; that it would have to be obtained from the county records at Canton, some twelve or fourteen miles distant.

310 Int'y 19th. If you know, state who was present at the time such delivery was made, when was it made, and at what time in the day.

Answer. I was not present, but learned from others that the delivery was made in the forenoon.

Int'y 20th. State if any papers were executed at the time of such delivery, or if any amount was agreed upon between complainants and Oneal as being the true amount of the latter's indebtedness to complainants; also state whether or not at the time of such delivery Oneal had fixed any amount of complainants' account that he was willing to allow as just.

Answer. No papers were signed, and in fact nothing in the way of a settlement was attempted until after the delivery of the cattle. Without notifying us Oneal delivered the cattle to Dawson, who had sold and delivered a portion of the same to other parties before Lewis Evans and I really knew that the delivery had been made. Oneal had not, prior to the delivery, agreed with us upon an amount that he was willing to settle as just; on the contrary, he had evaded doing so upon one pretext and another.

311 Int'y 21st. What was done with the cattle after they were delivered by Oneal to Dawson? When, if at all, was the bill of sale to the cattle executed by Oneal to Dawson, and at what time did Dawson execute his note, if at all, to complainants and said bank? State fully and particularly any and every thing that was then and there done by and between the parties in carrying out and consummating the agreements made at Fort Worth.

Answer. The cattle were driven off in a northwest direction, some five or six miles from Will's Point, so I learned from statements made by Mr. Dawson when he returned. A bill of sale was executed by Oneal to Dawson after the latter returned to Will's Point from the herd. At the same time Dawson executed his note to complainants and the bank. This was in the evening of the day upon which the cattle were delivered by Oneal to Dawson. After Dawson returned from the herd Oneal disputed over $8,000 of the claim of complainants against him. Under the Fort Worth agreements this amount was to be secured by Oneal. At the urgent solicitation of Dawson we first prepared the bill of sale from Oneal to him for the cattle, also the note that he was to sign to com-
312 plainants and the bank; these were signed and the credit was entered upon the note. I then commenced the preparation of the deed of trust from Oneal to secure complainants in the disputed amount of their claim, when Mr. Kearby informed me that it was impossible to get a description of the property short of Canton. At the time Dawson left for the herd he and all the parties at interest knew that this disputed amount of complainants' claim was unsettled and not secured.

Int'y 22nd. If, after the delivery of said cattle and before Dawson left Will's Point, any difference arose between complainants and Oneal with respect to the subject-matter of the said agreement made at Fort Worth, then state fully and particularly what that difference was, and also state whether it was then settled, and if not, state

why it was not settled, and state whether or not this was known to Dawson before he left Will's Point.

Answer. After the delivery of the cattle & before Dawson left Will's Point Oneal disputed over $8,000 of the claim of complainants against him and had failed to secure the same. This was fully known to Dawson at the time he left Will's Point.

313 Int'y 23rd. If O'Neal, at or after the delivery of the said cattle to Dawson, disputed any part of complainants' account, then state fully and particularly what part and how much of said account he so disputed, and state whether this was done before or after the delivery of said cattle to Dawson.

Answer. After the cattle had been delivered and moved out some five or six miles to the northwest of Will's Point Oneal and Dawson returned to that place, & it was then for the first time that he claimed that over $8,000 of complainants' claim against him was not correct; he then for the first time disputed that amount of the claim. Prior to that time I had several conversations with Oneal & Kearby about the claim and had understood from them that they accepted about $16,000 of the claim as correct. If I had suspected that Oneal intended to dispute more than $2,000 or $3,000 of the claim I certainly would have advised against complainants entering into the arrangement at Fort Worth. I was really surprised when he, taking the advantage of the wording of the agreements, disputed so large an amount of complainants' claim.

314 Int'y 24th. If the disputed amount of complainants' account was secured by Oneal in accordance with the agreements made at Fort Worth on the 20th day of March, 1880, then state fully how said amount was secured by said Oneal. If said amount was not so secured by Oneal, then state fully and particularly what was said and done by the parties to said agreement with respect to the matter, giving names and other particulars, and also why said disputed amount was not so secured.

Answer. The disputed amount of complainants' claim was not secured in accordance with the agreements made at Fort Worth. Mr. Kearby told me that it was then impossible to get a description of the property short of Canton. At the same time Oneal proposed to Lewis Evans, agent of complainants, to pay, in addition to Dawson's note, about $4,000 in full settlement of complainants' claim, and urged him to submit the proposition to complainants by telegram, and as it was then late in the day we could not expect an answer before Monday. He also proposed that in the event this proposition was not accepted that then we should meet in Will's Point on

315 the following Wednesday and then and there arbitrate the matter, and if that could not be accomplished, then he would secure the amount. At that time Oneal stated to us that he had plenty of cattle still on the range to pay this disputed amount. The proposition as to the payment of the money was telegraphed to complainants and was by them refused. On account of witness the meeting was delayed to the following Friday, when we met at Will's Point. The amount was not secured on the day the cattle were delivered, as Mr. Kearby said they could not furnish me with a de-

scription of the property to insert in the deed of trust; that such description could only be obtained from the records in Canton.

Int'y 25th. If complainants then and there demanded any security of Oneal for the disputed amount of their account against him, then state fully and particularly all that was then said and done by the parties in regard to that matter, and if any trust deed or mortgage was prepared with a view of securing said amount, then state why the same was not completed or why, if completed, the same was not executed.

316 Answer. I demanded the security, and it was not given, as Mr. Kearby claimed that the description of the property could only be had from the county records at Canton. I commenced the preparation of the deed of trust, and when I came to the place to insert a description of the property to be conveyed I called upon Mr. Kearby for the description, when he replied that it could only be had from the county records at Canton.

Int'y 26th. If Oneal then and their proposed to pay said disputed amount or any part of it, or prepared to make any settlement thereof, then state any and every thing that was said and done about that matter.

Answer. This interrogatory is partly answered in my answer to the twenty-fourth interrogatory, to which reference is here made. In addition Oneal represented that he had an abundance of property either to pay or secure the disputed amount of complainants' claim.

Int'y 27th. If any understanding was had between Oneal and complainants at that time with regard to settling or attempting to settle said disputed amount, then state fully what that un-

317 derstanding was, and when it was had, and whether or not the other parties to this suit knew of the matter.

Answer. When McKearby failed to furnish the description of the property to be inserted in the deed of trust the preparation of which I had commenced, the several propositions mentioned in my answer to the twenty-fourth interrogatory were then made by Oneal and Kearby to us, and we consented to meet them at Will's Point on the following Wednesday to arbitrate or otherwise settle the matter. The attorney of the bank, Mr. McCart, was present and knew of the matter.

Int'y 28th. If any effort or attempt was made afterwards to settle or secure said disputed amount by and between the parties, then please state when and where it was; also any and every thing that was then & there said and done with respect to that particular matter, giving names, dates, and other particulars.

Answer. Oneal & Kearby did meet Louis Evans and myself at Will's Point the following Friday; Col. A. G. Evans arrived that night. We endeavored to secure an arbitration of the matter, but Oneal and Kearby having selected their arbitrator, to whom

318 we made no objection, did object to every person named by us as an arbitrator—that is, to every person we were willing to submit the matter. The objections urged was the parties named were personal enemies of Oneal. We continued naming one party

after another and the same objection would be urged by Oneal, until we became satisfied that they were trifling with us and did not intend to do anything. I then demanded that security be given in accordance with the agreements made at Fort Worth, and Mr. Kearby told me that Oneal had no property with which to secure the amount; that his real estate was all under mortgage and other liens for amounts greater than its value; that a considerable portion of this real estate was also in litigation and of doubtful titles, and that Oneal was then insolvent, and that if we urged our claim it would break him up. I asked him about the large number of cattle that Oneal represented to us that he had besides those delivered to Dawson, and he replied that Oneal was mistaken about the number of cattle left after the delivery to Dawson, and that Oneal had sold all the cattle that remained after that delivery to the bank for the purpose of paying the balance he owed it. In this conversa-
319 tion Mr. Kearby repeated several times that Oneal had no property with which to secure the amount, and asked for time and sought delay. I replied that they had failed to comply with the Fort Worth agreements, and that it was not at all satisfactory to us. Subsequently Mr. Kearby asked me at what time I thought the disputed amount payable under the Fort Worth agreements, to which I replied that the disputed amount would be payable whenever it was fixed & determined by suit, arbitration, or otherwise, to which he replied that he thought it payable the 1st January, 1881, or words to that effect. This, however, was after he had repeatedly assured me that Oneal had no property with which to secure the disputed amount.

Int'y 29th. If any effort was made by complainants and Oneal to arbitrate and settle the amount in dispute between them, there tell when & where this occurred; also state fully the result of such attempt at arbitration and settlement.

Answer. That *is* interrogatory is fully answered in my answer to the twenty-eight- int'y, to which reference is here made for my answer to this interrogatory.

320 Int'y 30th. If, after such effort at arbitration and settlement, any demand was made by complainants upon Oneal to secure said disputed amount, as provided for in the said agreement executed at Fort Worth, then state when and where this occurred; also state fully and particularly everything that was then and there said and done with respect to that matter, giving names, dates, and other particulars.

Answer. This interrogatory is also fully answered in my answer to twenty-eighth interrogatory, to which reference is here made for my answer to this.

Int'y 31st. If in answer to the foregoing interrogatory you say that complainants did make a demand upon Oneal or his attorney to secure said disputed amount of complainants' account, then tell when and where this demand was made, by whom and upon whom made, and — O'Neal failed or refused to give such security, then state fully the reasons given by him or his attorney for such failure or refusal, and also everything that was then and there said and done

by Oneal or his attorney with respect to that matter; and, if any difference arose between the attorney of complainant- and the attorney
of Oneal about the proper construction of the Fort Worth
321 agreements in regard to the terms of the trust deed or mortgage to be given by Oneal to complainants, then state fully and particularly when this difference occurred, what this difference was, and also state fully any and every thing that was said and done with respect to that matter.

Answer. I made the demand upon Mr. Kearby for the security in May 29th, 1880, at Will's Point, Van Zandt county, Texas. He, in reply, informed — that Oneal had no property with which to secure the amount. Kearby was the attorney of and acting for Oneal, and I was the attorney of and acting for the complainants. The balance of this interrogatory is fully answered in my answer to twenty-eighth int'y, to which reference is here made.

Int'y 32nd. If you advised complainants with respect to the institution of this suit, then state fully what that advice was, and also when and where given, and if any other attorney give complainants advice with regard to the institution of this suit, then state who said attorney was, what advice he gave, when and where, and under what circumstances.

Answer. Col. A. G. Evans & I came directly to Dallas from Will's
Point, and, after consultation with Mr. Sawnie Robertson, we
322 advised Evans that he could only secure his rights by a resort to the court. We then prepared the papers and the suit was instituted.

Int'y 33rd. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer. I know of nothing in addition to what has already been stated.

Cross-interrogatories:

Cross-int'y 1st. Were not the different agreements and contracts referred to by you in your answer put in writing and were there any mistakes made in reducing them to writing? If so, explain what it was and how it occurred.

Answer. Certain agreements and contracts referred to by me were in writing and signed by the parties. There are no mistakes in these writings that I am aware of.

Cross-int'y 2nd. Are not the considerations and inducements for
making said contracts and agreements stated in said con-
323 tracts and agreements as they were intended to be? And if not, state in what particular they are incorrectly stated,

Answer. So far as I remember, the consideration & inducements are correctly stated in the various agreements.

Cross-int'y 3rd. Were you not present and was not one of pl'ffs present at Will's Point when the cattle were delivered by Oneal to

Dawson, and did you and such pl'ff know of such delivery and of the driving of said cattle by def't Dawson on the day it occurred, and did either of you make to said Dawson any objection then or until the cattle had been driven from the county where they then were; did you not by act and word consent to it?

Answer. Neither of the complainants were at Will's Point at the time Oneal delivered the cattle to Dawson. I was at Will's Point. The cattle, as I afterwards understood, was delivered some two miles southeast of that place. I was not present when the cattle were delivered. The first thing I knew of the delivery was when I saw the herd of cattle being driven across the prairie to the northwest of Will's Point. I did not object, because I had no opportunity
324 to do so. The necessary papers were prepared and signed, save and except the deed of trust from Oneal to complainants. I neither consented nor objected to Dawson's driving the cattle. He was a party to the agreements; knew that Oneal had not complied, and that we were demanding security for the disputed amount before he left Will's Point. I thought he could act in the matter upon his own rosponsibility without any advice or suggestion from me.

Cross-int'y 4th. Were you present or do you know what agreement was made or who by to get money advanced to or for def 't Oneal by the City National Bank of Ft. Worth?

Answer. I was not present and do not know how Oneal obtained money from the bank.

Deposition of J. B. F. Sampsel, Pl'ffs' Witness.

Deposition of J. B. F. Sampsel, a witness for pl'ffs, taken by and sworn to before Alpha K. Work, a notary public of Dallas county, Texas, on the 3rd day of June, 1882.

Int'y 1st. Are you acquainted with the parties to this suit? How long have you known them, and where?

325 Answer. Am acquainted with the parties to this suit; have known them about ten years, in St. Louis & Texas.

Int'y 2nd. Are you familiar with the subject-matter of this suit? If yea, how did you become acquainted with it? And if you had any connection with the business transactions out of which this controversy arose, then state fully your connection therewith.

Answer. Am familiar with the subject-matter of this suit; became so from being in Hunter, Evans & Co.'s office during 1879 & 1880. Myself & F. W. Flato kept the books and transacted all the office business for Hunter, Evans & Co. during 1879 & 1880. In addition, Hunter, Evans & Co. sent me in the fall of 1879 and the spring of 1880 to look after their direct interests in connection with J. A. Oneal's business with them.

Int'y 3rd. If you were at Will's Point, Van Zandt county, about the 28th day of May, 1880, then state fully and particularly what business, if any, you were there to transact, with whom, and what was done with respect to said business, and by whom.

Answer. I was at Will's Point, Texas, on or about May 28th,
326 1880; was sent there by Hunter, Evans & Co. to assist Judge I. T. Watts, our attorney, and L. W. Evans, a special agent, in arranging their matter with J. A. Oneal.

Int'y 4th. If you say you were at Will's Point about that time as the agent of complainants to assist in having the difference between them and Oneal as to the account sued on, then please state fully and particularly any and every thing that was then and there said and done about the matter, giving name, date, and other particulars.

Answer. Our attorney and Wm. Hunter, agent for Hunter, Evans & Co. at Fort Worth, had entered into an agreement with the City National Bank and Oneal & Jno. Dawson to drive Oneal's cattle north. In payment of the debts due Hunter, Evans & Co. and the City National Bank, Oneal disputed about five thousand dollars of Hunter, Evans & Co.'s account. This disputed portion was to have been secured by J. A. Oneal and arbitrated. I went to Will's Point to assist in accomplishing a settlement.

Int'y 5th. If the said matter was not arbitrated and settled, then state why it was not done.

327 Answer. Owing to Mr. Oneal, we could not arbitrate. I first suggested Mr. Owens, a prominent business man, as Hunter, Evans & Co.'s arbitrator. Mr. Oneal objected on account, as he said, that Mr. Owens was no friend of his and had been fighting him ever since he came to Will's Point. I then suggested a Mr. Williams, another prominent business man and banker, but Oneal opposed him on about the same grounds; also proposed two or three others, but all were objected to on frivolous grounds. I then informed Oneal that I did not come to Will's Point to appoint three of his cronies arbitrators, and through the attorney of Hunter, Evans & Co., Judge Watts, demanded security as per agreement at Fort Worth for the disputed portion of the account.

Int'y 6th. If any demand was made of Oneal to secure the amount of complainants' account disputed by him, then state if he furnished or proposed to furnish such security; state fully and particularly all and everything you know about the matter and what was done and said about the same, giving names and other particulars.

Answer. Judge Watts, attorney for Hunter, Evans & Co., A. G. Evans, of the firm of Hunter, Evans & Co., and myself
328 went to Oneal and Jerome Kearby, his attorney, and demanded security for the disputed account.

Int'y 7th. If Oneal failed or refused to furnish such security, then state what reason, if any, was given by him or his agent why such security was not given.

Answer. Oneal and his attorney refused to secure us in any way for the account, remarking that he had nothing to secure us with; that everything he had was mortgaged, &c. We then left on the train for Dallas.

Int'y 8th. If you heard Oneal or his agent say anything about the matter after the failure to furnish such security, please answer all

and everything you heard and said about the matter—by whom, when, and where.

Answer. We left immediately after Oneal's refusal to secure us, and heard nothing further at that time.

Int'y 9th. If you know anything about Oneal's selling to others any of the O N cattle upon which complainants had a lien, then state fully, minutely, and particularly all and everything you know about the matter, giving dates and other particulars; and if
329 you ever had any conversation or conversations with Oneal about making such sales, then state any and every thing he said—when, where.

Answer. Yes; Oneal, after mortgaging his cattle in O N brand to Hunter, Evans & Co., shipped about 90 head of beef steers to Strahom & Co., Chicago, and diverted the net proceeds of same to his own use. Hunter, Evans & Co. have a certificate from the cattle inspector of Van Zandt county in their possession certifying to above shipment. I myself saw, during the fall of 1879, several steers in the O N brand shipped by Oneal to Memphis; saw them in the R. R. Co.'s pens at Will's Point. Oneal also run two butcher shops, from the time he gave the mortgage until Dawson drove the cattle off, out of the O N brand.

Int. 10th. If you know, state how many and the value of the cattle owned by Oneal not in the O. N. brand, giving your means of information and the date about which you speak.

Answer. I don't know anything about any cattle owned by Oneal not in the O. N. brand.

Int'y 11th. If you were present in Montague county when the sheriff levied the writ of sequestration upon the herd, state
330 when and where this levy was made, in what direction the cattle were being driven, if at all. State the number of cattle that was in said herd that was not in the O N brand; and, if you know, please state the condition of Red River at the time.

Answer. Was present when the levy was made by the sheriff of Montague county. The levy was made in the first part of June, 1880, at a point about four miles from the Red River crossing for cattle, in Montague county. At the time the levy was made the cattle were on their bed ground. I don't know the number of cattle in the herd not in the O N brand. Red River at that time was impassable for cattle, being bank full and current too swift to cross anything.

Int'y 12th. If at the time the levy was made the cattle were not being moved, but was being herded in Montague county, then state why they were being so herded.

Answer. The herd only arrived in the prairie contiguous to Red River the evening before they were levied upon. If not levied upon they would have been compelled to herd there 8 to 10 days, as it was impossible to cross sooner. There were seven or eight cattle and pony herds lying in the prairie at the time unable to
331 cross, and they did not succeed in crossing until about 10 days after the levy was made.

Int'y 13th. State all and everything you know about said levy—the condition of the herd at the time, the number of cattle in said herd in the O N brand.

Answer. The levy was made during the first part of June. The cattle were in fair condition at time they were levied upon. The number of cattle turned over to Dawson was as follows:

396 yearlings, branded O N.
424 two-year-olds, " O N.
220 three-year-olds, " O N.
246 dry cows, " O N.
182 four-year-olds, " O N.
10 bulls, " O N.

At time of levy I cannot tell how many there were, as Dawson had sold or traded a lot of cows to Frank Houston, near Terrell. He also made a trade near St. Joseph, on the trail, and as the sheriff made no count on what was left I cannot tell how many of the O N brand was left in the herd at the time of the levy.

Int'y 14th. If you ever had any conversation or conversations with Oneal about the disputed amount of complainants' account, state any and every thing that he said about it, giving the
332 dates and other particulars.

Answer. Late in the fall of 1879 Mr. Oneal was in the St. Louis office, checked his account over, and did not dispute any of it. In May, when I was in Will's Point, he would dispute part of it one day and part next. The fact is he could not tell from his books anything about his cattle business, and the disputed matters were merely guess-work on his part.

Int'y 15th. If you know anything about the execution of the bill of sale by Oneal to complainants, dated ——, and the defeasance executed by complainants to Oneal, dated ——, then state, fully and particularly, any and every thing you may know about the matter.

Answer. I know about bill of sale & defeasance issued August 20th, 1879. I was in the office of Hunter, Evans & Co. at the time and wrote the original bill of sale referred to. It was given to secure Oneal's notes to them.

Int'y 16th. Who prepared said papers, and where and by whom were they signed? State your means of information.

Answer. I prepared both the bill of sale and the defeasance.
333 They were signed on the part of Hunter, Evans & Co. by A. G. Evans and by Jno. A. Oneal, and witnessed by me. I was present and seen them signed. I attach copies of both, marked "A."

Int'y 17th. Where are said papers now? If accessable to you please attach them or copies to your answer & identify them.

Answer. I don't know where originals are; attached find copies, marked A.

Int'y 18th. Were you present when the writ of sequestration sued out in this case was levied in Montague county? If yea, state, if you know, what portion of the herd in Dawson's charge was directed by said writ to be seized and what portion were seized—that is, as to brand.

Answer. I was present. The writ only called for a levy in cattle in O N brand, and no other cattle were seized. Defendant Dawson said to me, "I will make Hunter, Evans & Co. suffer for detaining my cattle outside of O N brand." I informed him that none except O N cattle were levied upon, and that he had our permission to cut any and all other cattle out and go on with them. This he declined to do.

Int'y 19th. Do you know what proportion the O. N. brand of cattle in the herd sold by Oneal to Dawson have to all other marks
334 & brands? How many of the O N brand did Oneal sell to Dawson at Will's Point?

Answer. Don't know exactly; refer you to answers to interrogatory No. 13 as to number.

Int'y 20th. How long was Dawson delayed in crossing Red River with the herd by the levy of the writ of sequestration?

Answer. He was not delayed at all. He could not have crossed before he did had there been no sequestration.

Int'y 21st. Do you know anything of the debt Oneal owed the City Nat'l Bank of Ft. Worth? What did the plaintiffs have to do with the creation of said debt?

Answer. Know nothing of Oneal's debt only from hearsay. Plaintiffs had nothing to do with said debt.

Int'y 22nd. Do you know anything of the state of accounts between the plaintiffs & said Oneal at the date of the commencement of this suit—how much at said date did either party owe the other, & which party?

Answer. Yes; Oneal owed plaintiffs something over eighteen thousand dollars.

335 Int'y 23rd. Have you ever seen the account filed with the complainants' amended bill in this cause? If yea, state whether or not you know anything of the items of said account.

Answer. Yes; am familiar with nearly if not all the items constituting said account.

Int'y 24th. Of what do the principal charges in said account against said Oneal consist?

Answer. The principal items and nearly the whole account is for drafts drawn by J. A. Oneal, or his authorized agents, for cattle shipped or to be shipped to plaintiffs.

Int'y 25th. If you have stated that said charges are of sums paid upon said Oneal's drafts, state, if you know, where said drafts are, and, if accessible to you, attach them as exhibits to your answers, and state what you know about each draft. If there are any you do not attach, state where they are & why you have not attached them.

Answer. Drafts are attached and made a part of this answer and marked Schedule B, as follows:

Date.	Favor of—	Am't.	Drawer.
'79.			
Feb. 17	Holt, Williams & Co.	$1,500 00	J. A. Oneal.
Mar. 6th	do.	200	Do.
" 17th	S. W. Lomax, cash.	3,141	Do.
336			
Mar. 25th	Holt, Williams & Co.	1,000	Do.
Apr. 1st	S. W. Lomax, cash'r	204 54	Do.
" 4	Holt, Williams & Co.	1,300 00	Do.
" 14th	S. W. Lomax, cash.	3,659 85	Do.
15th	Holt, Williams & Co.	2,525 00	Do.
May 3rd	S. W. Lomax, cash.	1,787 67	Do.
1879.			
May 5	Holt, Bevins & Co.	3,075 00	Do.
" 6	do.	530	Do.
" 10	W. H. Williams	1,000	Do.
" 10	"	1,305 44	Do.
" 12	S. W. Lomax, cash.	2,113 60	Do.
" 10	Holt, Bevins & Co.	408	Do.
" 10	J. W. Orr, shipper	5	Do.
" 5	Holt, Bevins & Co.	1,015 00	Do.
" 6	"	1,500 00	Do.
" 23	W. A. Williams	1,000	Do.
" "	"	750	Do.
" 26	"	1,000 500	Do.
" 31	"	700	Do.
June 7	S. W. Lomax, cash.	4,171 11	Do.
" 7	"	4,135 46	Do.
" 7	W. A. Williams	700	Do.
" 9	Red River Co. Bank	1,162 72	Do.
" 14	S. W. Lomax, cash'r.	3,213 96	Do.
" 19	W. A. Williams	1,150	Do.
" 24		900	
" 23	do.	1,000	Do.
" 25	Holt, Bevins & Co.	2,708 02	Do.
" "	"	2,681 48	Do.
" 24	W. A. Williams	1,522 50	Do.
" 23	G. W. Vories, cash.	1,800 00	Do.
" 30	S. W. Lomax, cash.	4,004 18	Do.
" "	"	1,909 50	Do.
July 1	W. A. Williams	1,000	Do.
" 5	Holt, Bevins & Co.	1,410	Do.
337			
1879.			
July 1	W. G. Vories, cash.	100 90	Do.
" 4	W. A. Williams	1,015	Do.
June 5	do.	2,500	Do.
July 8	do.	1,100	Do.
" 11	S. W. Lomax, cash.	4,845 01	Do.
" 10	G. W. Vories, cash.	2,600	Do.
" 12	S. W. Lomax, cash'r	3,340 46	Do.
" 15	W. A. Williams	520	Do.
" 14	G. W. Vories, cash'r	361	Do.
" 16	do.	2,739 00	Do.
" 11	H. M. McMiller	50	Do.
" 21	W. A. Williams	200	Do.
" 23	S. W. Lomax, cash.	886 50	Do.
" 21	S. W. Lomax, cash.	2,347 00	Do.
Aug. 8	do.	1,005	Do.
" 5	do.	7,000	Do.

Date.	Favor of—	Am't.	Drawer.
1879.			
Aug. 8	Murchison & Co.	400	J. A. Oneal.
" 16	S. W. Lomax, cash'r	2,500	Do.
" 17	" "	2,500	Do.
" 25	Holt, Bevins & Co.	1,500	Do.
" "	W. A. Williams	1,500	Do.
" 29	S. W. Lomax, cash.	5,259 70	Do.
" "	" "	1,774 95	Do.
Sept. 1	W. A. Williams	325	Do.
" "	"	124 15	Do.
" 1	Merchant & McCoy 13,000	17,251 15	Do.
" "	S. W. Lomax, cash. 4,251 15		
" 25	S. W. Lomax, cash.	8,002 35	Do.
" 30	W. A. Williams	277 42	Do.
Oct. 1	S. W. Lomax, cash.	7,113 14	Do.
" 10	" "	2,000	Do.
" 15	Holt, Bevins & Co.	2,864 63	Do.
" 17	W. A. Williams 695	5,292 08	Do.
" 17	S. W. Lomax 597 08		
" 18	" 4,000		
338			
1879.			
Oct. 20	W. A. Williams	500 00	Do.
" 22	S. W. Lomax, cash.	5,443 04	Do.
" 25	W. A. Williams	600	Do.
" 31	S. W. Lomax, cash.	7,359 75	Do.
Nov. 1	"	7,359 75	Do.
" 1	"	7,187	Do.
" 6	W. A. Williams	1,100	Do.

I attach the foregoing drafts, marked Schedule B. I know of my own personal knowledge that all of these drafts were paid.

Of drafts missing the list is as follows, and will be found attached to the deposition of Wm. Hunter, a witness in this case:

Date issued.	Favor of—	Am't.	Order of—
1879.			
May 27	J. A. Oneal	$3,053 25	Tidball, Vanzandt & Co.
" 30	do.	2,500	S. W. Lomax.
June 20	do.	221 85	Do.
" 21	do.	2,500	Do.
Aug. 6	do.	8,898 25	Do.
Sept. 15	do. 2,661 24	6,701 24	Tidball & Co.
" "	do. 4,000		Do.
" "	do.	6,724 47	S. W. Lomax.
Oct. 25	do.	1,006 34	Tidball & Co.
Dec. 3	do.	652 53	S. W. Lomax.

Above drafts were drawn by Wm. Hunter on cattle shipped and sold and proceeds placed to the credit of Oneal's ac. I know of my own personal knowledge that all of the above drafts were paid and that Oneal got the benefit of them.

339 Int'y 26th. What other items of charges are there upon said account besides those covered by said drafts?

Answer. The other charges against Oneal consist of sundry amounts paid shippers in his employ, charges for interest on overdrafts, expenses of telegraphing, exchange. His notes given at various times credited to his account, and being unpaid when due, were paid by plaintiffs and charged back to his account; also losses made on shipments East on his account and losses on his partnership accounts charged back to his ac.

Int'y 27th. Will you explain each of said items fully & state why they are entered as charges against said Oneal?

Answer. Amounts paid shippers and charged to Oneal were as follows:

June	9th	$3	
"	17	10	
"	28	2	
July	9	5	
"	24	2	
Aug.	11	14	50
Sept.	1	*48	
"	26	16	
Oct.	6	2	
"	7	10	
	Oct. 21	*20	
340	No. 7	8	
	" 17	5	

The above amounts were paid at times stated. It is customary to advance small amounts to regular shippers without orders.

On June 20th Oneal gave plaintiffs three promissory notes for thirty thousand dollars, said notes being for ten thousand dollars each, due in one, two, and three months. Said notes were charged to bills receivable and credited to Oneal's account, less int., in amounts $9,908.34, $9,825.00, & 9,741.67, respectively. On August 20th the first two notes were due and unpaid, and were paid by Hunter, Evans & Co., and the amount of principal and interest on one note of $10,000.00 for one month, an aggregate of $20,050.00, was charged back to Oneal's account. On September 20th the third note, being due and unpaid by Oneal, was paid by Hunter, Evans & Co. and charged back to Oneal's account. On August 22*th* Mr. Oneal executed his note to Hunter, Evans & Co. for $11,000.00, due in forty days, and his note for $11,000.00, due in sixty days, giving bill of sale before referred to as security.

These notes both became due and were unpaid by Oneal. On Oct. 4, 1879, Hunter, Evans & Co. paid one of these notes, and on October 24th they paid the other note. I attach both notes
341 to this deposition, marked Schedule " E."

* Order attached " C."

Amounts Paid Out for Telegrams on Ac. Oneal.

May 17	$3 25
Aug. 5	1 00
Sept. 6	1 80
Nov. 8	2 35

Cannot explain these items fully, but they were paid on Oneal's ac.
Charges for interest were as follows:
Sept. 30th, $50.06, int. on overdrafts to date.
Nov. 25, 278.41, int. on overdrafts from Sept. 30 to Nov. 25.
Dec. 31, 192.25, int. on overdrafts from Nov. 25 to Dec. 31st.
Jan. 31, 158.96, int. to that date from Dec. 31 on balance of ac.

June 9, exchange	$1 55
" 14, "	5
Nov. 18, shipper & ex.	35 25

I cannot now tell what these items were for, but they are correct.
The partnership losses charged to Oneal are as follows:

June 4, Oneal & Jones	29 40
July 5, Oneal & Downing	101 50
Dec. 23, Oneal & Wilkinson	2 04

Attached find itemized statements showing correctness of these charges, marked Schedule D.

The loss on New York shipment charged to Oneal's accounts was $665.99, this being amount lost between what was drawn against the cattle and credited Oneal's ac. and the nett proceeds
342 of cattle.

Int'y 28th. Of what do the items of credit upon said account principally consist? If you state that said items consist principally of credits on said account from shipments & sales of cattle, state how said sales were made & by whom they were made & at what prices.

Answer. The credits consist of sales of cattle, notes discounted, and rebates on cars of cattle shipped—principally of sales of cattle. The cattle were sold in open market, the same as all stock is sold. They were sometimes sold by A. G. Evans and sometimes sold by M. P. Buell, both members of the firm. They brought from $2.25 to $3.25 p'r 100 lbs., just as they happened to strike a market; some went to Chicago, and one shipment went to New York.

Int'y 29th. Were any of said sales made in New York city; if so, which, & under what circumstances were they so made? State fully.

Answer. Yes; one sale shipped to New York, but sold in Philadelphia; shipped on account of low prices in St. Louis, and Oneal's letter of instructions; made draft for $3,456.37, nett proceeds $2,797.46. Oneal's credit is on Sept. in the credit of $6,641.36. The loss,
343 $665.99, was charged to Oneal- account. Attached find ac. sales marked "F;" also attach ac. sales of 292 cattle sold by Stra-

horn & Co., Chicago, nett proceeds credited Oneal's ac., Nov. 10th, $7,065.60, marked Schedule G.

Int'y 30th. Please explain any other item in said account not fully explained in answer to previous questions, and attach to your answers any letter or other paper connected with or elucidating said account which you may have or can obtain, & state all you know respecting it.

Answer. In my answer to one of the previous interrogatories I omitted to mention a charge against Oneal on Nov. 7, 1879, of $1,568.10 paid National Yards, and an error in freight bill, Nov. 10, 1879, of $29.40. This amount of $1,568.10 was for the freight of 14 cars of cattle from Texas to St. Louis. Hunter, Evans & Co. paid the charges on the 14 cars to St. Louis, and forwarded the cattle to R. Strawhorn & Co., Chicago, for sale. Schedule G shows ac. sales for same; also that no back charges followed; attached bill marked Schedule H shows above fr't bill; also the error charged to Oneal on November 10th, 1879, of $29.40. I also attach the cattle inspector's of Van Zandt county certificate showing the marks and brands
344 of the O. N. cattle shipped to Strawhorn & Co. after the O. N. stock was mortgaged to Hunter, Evans & Co., marked Schedule I. For every sale of consigments of stock made by Oneal to Hunter, Evans & Co. there was an account sale made and returned to Oneal by mail.

Int'y 31st. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause or either of them or that may be material to the subject of this your examination or the matters in question in this cause? And, if yea, set forth the same fully and at large in your answer.

Answer. On Feb. 15th, 1880, Oneal, as per his letter attached, marked Schedule J, admits that his books show that he owes Hunter, Evans & Co. sixteen thousand three hundred dollars.

Cross-interrogatories:

Cross-int'y 1st. If you state anything about the ac. between pl'ffs & def't Oneal, state if everything you have testified to is in your personal knowledge. Are there not many items in said ac-
345 count of which you have no personal knowledge? Name such items. State your means of information in regard to each item.

Answer. Everything I have testified to is of my personal knowledge. Each item of the account came under my personal observation. Direct connection with the business comprising the items of Oneal'- account is my source of information.

Cross-int'y 2nd. Were you present when the City National Bank of Fort Worth first agreed to let def't Oneal have money? State all who were present and what agreement was made and between whom.

Answer. I was not.

Cross-int'y 3rd. When the writ of sequestration was levied on the cattle in Montague county was def't Dawson put thereby to any

labor, trouble, or expense; and, if so, what? Was he delayed any thereby; and, if so, how long?

Answer. Yes; he was put to the trouble, labor, & expense of making a trip to Fort Worth to make a replevin bond that I know of. He was not delayed any, as Red River was impassable for
346 stock up to the time he regained possession of the cattle.

Cross-int'y 4th. Did not pl'ffs afterwards cause other cattle belonging to def't Oneal to be seized in Van Zandt county by a writ of sequestration issued in this case, and have not the pl'ffs in this case got possession of such cattle and without the knowledge or consent of Oneal sold them and converted to their own use their proceeds?

Answer. Yes; I, as agent for pl'ffs, secured a writ of sequestration, and under said writ had a number of cattle seized and shipped them out, realizing about twenty-two hundred dollars. This seizure was made with the knowledge, but without the consent, of Oneal.

Cross-int'y 5th. Did you not make the affidavits for writs of sequestration in this case; did you not do so at the instance and request of pl'ffs or one of them or their attorneys?

Answer. Yes; I did so at their request, as their agent.

Cross-int'y 6th. Were you not at Will's Point when the cattle were delivered by Oneal to Dawson, and did you not know
347 that both of such delivery and of the cattle being driven off by Dawson at the time, and did not some of pl'ffs and other of their agents and attorneys know of the same and that the proposed destination of the cattle was a market out of the State of Texas and in the direction they were being driven, and did you or any one of them then make any objections thereto?

Answer. I was not. I did not know of the delivery, but knew that the cattle were to be delivered and driven off under a contract entered into between the parties; some of our agents knew of it; if they protested or not I do not know.

Cross-int'y 7th. Were not pl'ffs in many instances interested as purchasers, either directly or indirectly, in cattle sold by them for def't Oneal?

Answer. No, sir; not to my knowledge.

Cross-int'y 8th. Are you not now in the employment of pl'ffs.

Answer. No, sir.

Exhibits & Schedules Attached to Deposition of J. B. F. Sampsel.

348 SCHEDULE "A."

(This is the bill of sale bet. Oneal & pl'ffs & the defeasance, already copied herein on page 116 of this transcript.)

SCHEDULE "B."

$1,100. WILL'S POINT, TEXAS, *Nov. 6th*, 1879.

One day sight pay to the order of W. A. Williams eleven hundred dollars, value received, and charge the same to account of—

JNO. A. ONEAL.

To Hunter, Evans & Co., East St. Louis, Ill.

[Written across the face:] Nov. 10, '79. Accepted. Hunter, Evans & Co.

(Endorsed:) Pay W. H. Thompson, cash'r, or order. W. H. Williams. Pay to the order of G. W. Dausch, cash'r, for collection account of Boatman's Saving- Bank, St. Louis, Mo. W. H. Thomson, cashier. G. W. Dausch, cash'r. C. H. Wittington.

$7,187.00. FORT WORTH, 11, 1, 1879.

Pay to the order of S. W. Lomax, cash., seven thousand one hundred & eighty-seven dollars, value received, and charge the same to account of—

No. 55. JNO. A. ONEAL.

To Hunter, Evans & Co., East St. Louis, Ills.

(Endorsed:) Pay to the order of G. H. Goddard, cash., for collection account of the City National Bank of Fort Worth, Texas. S. W. Lomax, cas. No. 9881. E. G. Moses, teller. C. H. Wittington.

349 $7,359.75. 11, 1ST, 1879.

Pay to the order of S. W. Lomax, cash'r, seven thousand three hundred & fifty-nine $\frac{75}{100}$ dollars, value received, and charge the same to account of—

No. 54. JNO. A. ONEAL.

To Hunter, Evans & Co., East. St. Louis, Ill.

(Endorsed:) Pay to the order of G. H. Goddard, cash., for collection account of the City National Bank of Ft. Worth, Texas. S. W. Lomax, cash'r. No. 9880. E. G. Moses, teller. C. H. Wittington.

$7,359.75. 10, 31, 1879.

Pay to the order of S. W. Lomax, cash'r, seven thousand three hundred & fifty-nine $\frac{75}{100}$ dollars, value received, and charge the same to account of—

No. 53. JNO. A. ONEAL.

To Hunter, Evans & Co., East. St. Louis, Ills.

(Endorsed:) Pay to the order of H. L. Newman & Co., for collection account of the City National Bank of Ft. Worth, Texas. S. W. Lomax, cash. No. 9856.

$600.00. WILL'S POINT, TEX., *Oct.* 25, 1879.

At sight pay to the order of W. A. William six hundred dollars, value received, and charge the same to account of—

No 51. JNO. A. ONEAL.

To Hunter, Evans & Co., East St. Louis, Ill.

350 (Endorsed:) Pay Wm. H. Thomson, cash'r, or order. W. A. Williams. Pay to the order of G. W. Dausch, cash'r, for collection account of Boatman's Savings Bank, St. Louis, Mo. Wm. H Thomson, cashier. G. W. Dausch, cash. C. H. Wittington.

$5,443.04 FORT WORTH, TEX., *Oct. 29th*, 1879.

At sight pay to the order of S. W. Lomax, cash., fifty-four hundred & forty-three $\frac{4}{100}$ dollars, value received, and charge the same to account of—
No. 50. JNO. A. ONEAL.

To Hunter, Evans & Co., East St. Louis, Ill.

(Endorsed:) Pay to the order of G. H. Goddard, cash'r, for collection account of the City National Bank of Fort Worth, Texas. S. W. Lomax, cash. No. 9744. E. G. Moses, tell'r. C. A. Wittington.

$500.00. WILL'S POINT, *Oct.* 20, 1879.

At sight pay to the order of W. A. Williams five hundred dollars, value received, and charge the same to account of part advance on cattle ship-ed by Gilliland.
JNO. A. ONEAL.

To Hunter, Evans & Co., National Stock Yard, East St. Louis, Ill

(Endorsed:) Pay Wm. H. Thomas, cash'r, or order. W. A. Williams. C. H. Wittington. Pay to the order of G. W. Dausch,
351 cash'r, for collection account of Boatmen's Saving- Bank, St. Louis, Mo. R. J. Lackland, cashier, p'r G. W. Dausch, cash.

$4,000.00. WILL'S POINT, TX., *Oct.* 18, 1879.

At sight pay to the order of S. W. Lomax, cashier, four thousand dollars, value received, and charge the same to account of—
No. 48. JNO. A. ONEAL.

To Hunter, Evans & Co., East St. Louis, Ill.

(Endorsed:) Pay to the order of G. H. Goddard, cash'r, for collection account of the City National Bank of Ft. Worth, Texas. S. W. Lomax, cash. No. 9708. E. G. Moses, tell'r. C. H. Wittington.

The City National Bank of Ft. Worth.

$597.08. FT. WORTH, TEX., 10, 17TH, 1879.

Pay to the order of S. W. Lomax, cash'r, five hundred & ninety-seven $\frac{8}{100}$ dollars, value received, and charge to account of—
JOHN A. ONEAL.
ALLEN.

To Hunter, Evans & Co., East St. Louis, Ills.

(Endorsed:) Pay to the order of G. H. Goddard, cash'r, for collection account of the City National Bank of Ft. Worth, Texas. S. W. Lomax, cash'r. No. 9683. E. G. Moses, tell'r. C. H. Wittington.

$695.00 WILL'S POINT, *Oct.* 17, 1879.

At sight pay to the order of W. A. Williams six hundred
352 & ninety-five dollars, value received, and charge the same to account of—

No. 47. JNO. A. ONEAL.

To Hunter, Evans & Co., National Stock Yard, East St. Louis, Ills.

(Endorsed:) Pay Wm. H. Thomson, cashier, or order. W. A. Williams. Pay to the order of G. W. Dausch, cash'r, for collection account of Boatmen's Saving- Bank, St. Louis, Mo. R. J. Lackland, cashier. G. W. Dausch, cas'r. C. H. Wittington.

$2,864.63. WILL'S POINT, TEX., *Oct.* 15*th*, 1879.

At sight pay to the order of Holt, Bevins & Corly twenty-eight sixty-four $\frac{93}{100}$ dollars, value received, and charge the same to account of —

No. 46. JNO. A. ONEAL.

To Hunter, Evans & Co., East St. Louis, Ill.

(Endorsed:) Pay Bank of Commere or order, for account of Holt, Bevens & Corly. Received payment Oct. 18, 1879. J. C. Van Blarcom, cashier.

$2,000.00. WILL'S POINT, *Oct.* 10*th*, 1879.

At sight pay to the order of S. W. Lomax, cash'r, two thousand dollars, value received, and charge the same to account of —

JNO. A. ONEAL.

To Hunter, Evans & Co., National Stock Yard, East St. Louis, Ills.

(Endorsed:) Pay to the order of G. H. Goddard, cash'r, for
353 collection account of the City National Bank of Fort Worth, Texas. S. W. Lomax, cash. No. 9628. E. G. Moses, teller. C. H. Wittington.

$7,113.14. FT. WORTH, *Oct.* 1, 1879.

Ten days after date pay to the order of S. W. Lomax, cashier, seven thousand one hundred thirteen ^{14} dollars, value received, and charge the same to account of—

No. 43. JNO. A. ONEAL.

To Hunter, Evans & Co., East St. Louis, Ill.

[Written across the face:] Accepted. Hunter, Evans & Co.

(Endorsed:) Pay to the order of H. L. Newman & Co., for collection account of the City National Bank of Fort Worth, Texas. S. W. Lomax, cash'r. X M. No. 2305.

$277.42. WILL'S POINT, *Sept.* 30, 1879.

At sight pay to the order of W. A. Williams two hundred and seventy-seven $\frac{42}{100}$ dollars, value received, and charge the same to account of—

No. 37. JNO. A. ONEAL.

To Hunter, Evans & Co., National Stock Yards, East St. Louis, Ill.

(Endorsed:) Pay Wm. H. Thomson, cash., or order. W. A. Williams. Pay to the order of G. W. Dausch, cash'r, for collection account of Boatmen's Savings Bank, St. Louis, Mo. Wm. H. Thomson, cashier. G. W. Dausch, cash'r. C. H. Wittington.

354 $8,000.00. FORT WORTH, *Sept.* 25, 1879.

At sight pay to the order of S. W. Lomax, cashier, eight thousand dollars, value received, and charge the same to account of—

No. 42. JNO. A. ONEAL.

To Hunter, Evans & Co., East St. Louis, Ills.

(Endorsed:) Pay to the order of G. H. Goddard, cash, for collection account of the City National Bank of Fort Worth, Texas. S. W. Lomax, cash'r. No. 9404. E. G. Moses, tell'r. C. H. Wittington.

(Protest attached to above note.)

$8,000.00. FORT WORTH, *Sept.* 25, 1879.

At sight pay to the order of S. W. Lomax, cashier, eight thousand dollars, value received, and charge the same to account of—

No. 42. JNO. A. ONEAL.

To Hunter, Evans & Co., East St. Louis, Ills.

Endorsed by S. W. Lomax, cashier.

STATE OF ILLINOIS, *St. Clair County,* } *ss:*

Be it known that on this 27th day of September, in the year of our Lord one thousand eight hundred and seventy-nine, I, Gilbert B. Foster, a notary public, duly commissioned and sworn and residing in the precinct of E. St. Louis, in said county and State, at the request of Valley National Bank, St. Louis, Mo., went with the original draft, of which a true copy is above written, to Hunter, Evans & Co. and demanded payment, which was refused.

355 Whereupon I, the said notary, at the request of the aforesaid —, did protest, and by these presents do solemnly protest, as well against the drawer of said draft, the indorsers thereof, as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, charges, damages, and interest already incurred by reason of the non-payment of the said draft.

And I, the said notary, do hereby certify that on the same day and year above written due notice of the foregoing protest was put in the post office at National Stock Yards, Ills., as follows: Notice for S. W. Lomax, cashier City National Bank, Fort Worth, Texas; for Jno. A. Oneal, Fort Worth, Texas; for Hunter, Evans & Co., National Stock Yards, Ills., each of the above-named places being the reputed place of residence of the persons to whom this notice was directed.

In testimony whereof I have hereunto set my hand and affixed my official seal the day and year above written.

[SEAL.] G. B. FOSTER,
Notary Public.

Fees:

Noting for protest	25 cts.
Protest	75 cts.
Noting protest	25 cts.
3 notices	75
Certificate and seal	25 cts.
Postage	10 c.
	$2 35

(Endorsed:) Valley National Bank, September 27th, 1879. $8,000.00. Fee, $2.35. Draft of Jno. A. Oneal on Hunter, Evans & Co. Protested for non-payment.

356 $4,251.15. PALO PINTO, TEX., *Sept. 1st*, 1879.

Sixty days after date pay to the order of S. W. Lomax forty-two hundred & fifty-one [15] dollars, value received, and charge the same to account of—

No. 41. JNO. A. ONEAL.

To Hunter, Evans & Co., East St. Louis, Ill.

[Written across the face:] Accepted Sept. 5th, 1879. Hunter, Evans & Co.

(Endorsed:) Pay to the order of H. L. Newman & Co. for collection account of the City National Bank of Fort Worth, Texas. S. W. Lomax, cashier. No. 9145.

$13,000.00. PALO PINTO, TEXAS, *Sept. 1st*, 1879.

Six days after date pay to the order of Merchant and McCoy thirteen thousand dollars, value received, and charge the same to account of—

No. 40. JNO. A. ONEAL.

To Hunter, Evans & Co., East St. Louis, Ill.

[Written across the face:] Accepted. Hunter, Evans & Co.

(Endorsed:) Merchant & McCoy. Pay City Nat'l Bank or order. W. Hunter. Pay to the order of G. H. Goddard, cashier, for collection account of the City National Bank of Fort Worth, Texas. S. W. Lomax, cash'r. No. 9146. E. G. Moses, teller. C. H. Wittington.

$124.15. WILL'S POINT, TEX., *Sept.* 1*st*, 1879.

At sight pay to the order of W. A. Williams one hundred and twenty-four $\frac{15}{100}$ dollars, value received, and charge the same to account of—

ONEAL & DOWNING.

To Hunter, Evans & Co., East St. Louis, Ills.

(Endorsed:) Pay Wm. H. Thomson, cash'r, or order.
357 W. A. Williams. Pay to the order of G. W. Dausch, cash'r, for collection account of Boatmen's Savings Bank, St. Louis, Mo. Wm. H. Thomson, cashier. G. W. Dausch, cash'r. C. H. Wittington.

$325.00. WILL'S POINT, TEX., *Sept.* 1*st*, 1879.

At sight pay to the order of W. A. Williams three hundred and twenty-five dollars, value received, and charge the same to the account of—

No. 30. JNO. A. ONEAL.

To Hunter, Evans & Co., East St. Louis, Ills.

(Endorsed:) Pay Wm. H. Thomson, cash'r, or order. W. A. Williams. Pay to the order of G. W. Dausch, cash'r, for collection account of Boatmen's Saving- Bank, St. Louis, Mo. Wm. H. Thomson, cashier. G. W. Dausch, cas. C. H. Wittington.

$1,774.95. FORT WORTH, 8, 29, 1879.

Pay to the order of S. W. Lomax, cash'r, seventeen hundred & seventy-four $\frac{95}{100}$ dollars, value received, and charge the same to account of—

ONEAL & ATKINSON.

To Hunter, Evans & Co., East St. Louis, Ills.

(Endorsed:) Pay to the order of H. L. Newman & Co. for collection account of the City National Bank of Fort Worth, Texas. S. W. Lomax, cash'r. No. 9077.

$5,259.70. FORT WORTH, 8, 29, 1879.

Pay to the order of S. W. Lomax, cash., fifty-two hundred & fifty-nine & $\frac{70}{100}$ dollars, value received, and charge the
358 same to account of—

JNO. A. ONEAL.

To Hunter, Evans & Co., East St. Louis, Ills.

(Endorsed:) Pay to the order of H. L. Newman & Co. for collection account of the City National Bank of Fort Worth, Texas. S. W. Lomax, cash. No. 9076.

$1,500.00. WILL'S POINT, *Aug.* 25, 1879.

At sight pay to the order of W. A. Williams fifteen hundred dollars, value received, and charge the same to account of—
No. 28. JNO. A. ONEAL.

To Hunter, Evans & Co., National Stock Yards, East St. Louis, Ills.

(Endorsed:) Pay Wm. H. Thomson, cash'r, or order. W. A. Williams. Pay to the order of G. W. Dausch, cash'r, for collection account of Boatmen's Savings Bank, St. Louis, Mo. Wm. H. Thomson, cash'r. G. W. Dausch, cash'r.

$1,500.00. WILL'S POINT, *Aug.* 25, 1879.

At sight pay to the order of Holt, Bivins & Corley one thousand five hundred dollars, value received, and charge the same to account of—
No. 29. JNO. A. ONEAL.

To Hunter, Evans & Co., National Stock Yards, East St. Louis, Ills

(Endorsed:) Pay Bank of Commerce, St. L., or order, for
359 account of Holt, Bivins & Corley. Received payment Aug. 28, 1879. J. C. Van Blarcom, cashier.

$2,500. WILL'S POINT, TEX., *Aug.* 17, 1879.

At sight pay to the order of S. W. Lomax two thousand five hundred dollars, value received, and charge the same to account of—
No. 27. JNO. A. ONEAL.

To Hunter, Evans & Co., National Stock Yards, East St. Louis, Ills.

(Endorsed:) Pay to the order of H. L. Newman & Co. for collection account of the City National Bank of Fort Worth, Texas. S. W. Lomax, cash'r. No. 8749.

$2,500. WILL'S POINT, *Aug.* 16, 1879.

At sight pay to the order of S. W. Lomax two thousand five hundred dollars, value received, and charge the same to account of—
No. 25. JNO. A. ONEAL.

To Hunter, Evans & Co., National Stock Yards, East St. Louis, Ills.

(Endorsed:) S. W. Lomax. Pay to the order of G. H. Goddard, cash., for collection account of the City National Bank of Fort Worth, Texas. Jno. Nichols, pres. No. 8946. E. G. Moses, tell-r. C. H. Wittington.

$400.00. WILL'S POINT, TEX., *Aug. 8th*, 1879.

At sight pay to the order of Murchison, Jones & Co. four
360 hundred dollars, value received, and charge the same to account of—
No. 23. JNO. A. ONEAL.

To Hunter, Evans & Co., at National Stock Yards, East St. Louis, Ills.

(Endorsed:) Pay H. L. Newman & Co. or order for collection account, No. 179,684, Third National Bank of St. Louis. T. A. Stoddart, cashier. Pay Royall, Coleman & Co. or order. Murchison, Jones & Co. Pay to the order of Conrad, Jordan & Co. Royall, Coleman & Co., Conrad, Jordan & Co. Pay T. A. Stoddart, cash., or order, for collection acc't. Paul F. Thurston & Co.

$7,000.00. WILL'S POINT, TEX., *Aug. 5th*, 1879.

Thirty days after date pay to the order of S. W. Lomax, cashier, seven thousand dollars, value received, and charge the same to account of—

No. 22. JNO. A. ONEAL.

To Hunter, Evans & Co., National Stock Yards, East Saint Louis, Ills.

[Written across the face:] Accept. Hunter, Evans & Co.

(Endorsed:) Pay to the order of G. H. Goddard, cash'r, for collection account of the City National Bank of Fort Worth, Texas. S. W. Lomax, cash'r. No. 8847. E. G. Moses, teller. C. H. Wittington.

$1,005.00. FT. WORTH, TEX., 8, *7th*, 1879.

Pay to the order of S. W. Lomax, cash'r, ten hundred & five dollars, value received, and charge to account of—

361 JNO. A. ONEAL.

To Hunter, Evans & Co., East St. Louis, Ills.

(Endorsed:) Pay to the order of G. H. Goddard, cash., for collection account of the City National Bank of Ft. Worth, Texas. A. M. Britton, V. P. No. 8856. E. G. Moses, tell-r.

$2,347.00. WILL'S POINT, *July* 21, 1879.

At sight pay to the order of Geo. W. Voiers, cashier, two thousand three hundred & forty-seven dollars, value received, and charge the same to account of—

No. 21. JNO. A. ONEAL.

To Hunter, Evans & Co., National Stock Yards, East St. Louis, Ills.

[Endorsed:] Pay Wm. H. Thomson, cashier, or order, for collection for Red River County Bank, Clarksville, Texas. G. W. Voiers, cashier. Pay to the order of Geo. W. Dausch, cash'r, for collection account of Boatmen's Savings Bank, St. Louis, Mo. Wm. H. Thomson, cashier. Geo. W. Dausch, cas.

$886.50. FT. WORTH, *July 23d*, 1879.

At sight pay to the order of S. W. Lomax, cash., eight hundred & eighty-six $\frac{50}{100}$ dollars, value received, and charge the same to account of—

No. 75. JNO. A. ONEAL.

To Hunter, Evans & Co., East St. Louis, Ills.

362 (Endorsed:) Pay to the order of G. H. Goddard, cash'r, for collection account of the City National Bank of Fort Worth, Texas. S. W. Lomax, cash'r. No. 8709. E. G. Moses, tell'r. C. H. Wittington.

$200.00. WILL'S POINT, *July* 21, 1879.

At sight pay to the order of W. A. Williams two hundred dollars, value received, and charge the same to account of—

No. 20. JNO. A. ONEAL.

To Hunter, Evans & Co., National Stock Yards, East St. Louis, Ills.

(Endorsed:) Pay Wm. H. Thomson, cash'r, or order. W. A. Williams. Pay to the order of G. W. Dausch, cash'r, for collection account of Boatmen's Savings Bank, St. Louis, Mo. Wm. H. Thomson, cashier. G. W. Dausch, cash'r.

$50.00. FT. WORTH, *July* 11*th*, 1879.

At sight pay to the order of H. M. McMiller fifty dollars, ac. of shipping, value received, and charge the same to account of—

No. 13. JNO. A. ONEAL.

To Hunter, Evans & Co., East St. Louis, Ills.

(Endorsed:) Pay C. H. Withington, cashier, or order, for collection for St. Louis National Bank. J. Nickerson, cashier. Pay
363 to order of Louie McMiller. H. M. McMiller, Mrs. Louie McMiller. Pay First Nat'l Bank of Chicago, Ill., or order, for collection for account Second National Bank, Rockford, Ill. G. A. Sanford, cashier. Pay to the order of J. Nickerson, cas., for collection account of First Nat'l Bank, Chicago. Jul. 21, 1879. C. H. Wittington, cashier.

$2,739.00. WILL'S POINT, *July* 16, 1879.

At sight pay to the order of Geo. W. Voiers, cashier, two thousand seven hundred and thirty-nine dollars, value received, and charge the same to account of—

No. 19. JNO. A. ONEAL.

To Hunter, Evans & Co., National Stock Yards, East St. Louis, Mo.

(Endorsed:) Pay Wm. H. Thomson, cashier, or order for collection for Red River County Bank, Clarksville, Texas. G. W. Voiers, cashier. Pay to the order of G. W. Dausch, cash'r, for collection account of Boatmen's Saving- Bank, St. Louis, Mo. Wm. H. Thomson, cashier. G. W. Dausch, cash'r.

$361.00. WILL'S POINT, TX., *July* 14, 1879.

At sight pay to the order of Geo. W. Voiers, cashier, three hundred and sixty-one dollars, value received, and charge the same to account of—

364 No. 171. JNO. A. ONEAL.

To Hunter, Evans & Co., National Stock Yard, East St. Louis, Ills.

(Endorsed:) Pay W. H. Thomson, cashier, or order for collection for Red River County Bank, Clarksville, Texas. G. W. Voiers, cashier. Pay to the order of G. W. Dausch, cash'r, for collection account of Boatmen's Saving- Bank, St. Louis, Mo. Wm. H. Thomson, cashier. G. W. Dausch, cas.

$520.00. WILL'S POINT, TEX., *July* 15, 1879.

At sight pay to the order of W. A. Williams five hundred and twenty dollars, value received, and charge the same to the account of—

No. 18. JNO. A. ONEAL.

To Hunter, Evans & Co., National Stock Yards, East St. Louis, Ills.

(Endorsed:) Pay Wm. H. Thomson, cash'r, or order. W. A. Williams. Pay to the order of G. W. Dausch, cashier, for collection account of Boatmen's Savings Bank, St. Louis, Mo. Wm. H. Thomson, cashier. G. W. Dausch, cash'r.

$3,340.46. FT. WORTH, *July* 12*th*, 1879.

At sight pay to the order of S. W. Lomax, cash'r, thirty-three hundred and forty $\frac{46}{100}$ dollars, value received, and charge the same to account of—

JNO. A. ONEAL.

365 To Hunter, Evans & Co., East St. Louis, Ills.

(Endorsed:) Pay to the order of Valley National Bank for collection account of City National Bank of Fort Worth, Texas. Jno. Nichols, pres't. No. 8623. E. G. Moses, tell'r. C. H. Wittington.

$2,600.00. WILL'S POINT, *July* 10*th*, 1879.

At sight pay to the order of G. W. Voiers, cash'r, two thousand six hundred dollars, value received, and charge the same to account of—

No. 11. JNO. A. ONEAL.

To Hunter, Evans & Co., National Stock Yards, East St. Louis, Ills

(Endorsed:) W. H. Thomson, cashier, or order for collection for Red River County Bank, Clarksville, Texas. G. W. Voiers, cashier. Pay to the order of G. W. Dausch, cash'r, for collection account of Boatmen's Saving- Bank. Wm. H. Thomson, cashier. G. W. Dausch, cash.

$4,845.00. FT. WORTH, *July* 11*th*, 1879.

At sight pay to the order of S. W. Lomax, cash'r, forty-eight hundred & forty-five dollars, value received, and charge the same to account of—

No. 14. JNO. A. ONEAL.

To Hunter, Evans & Co., East St. Louis, Ills.

(Endorsed:) Pay to the order of G. H. Goddard, cash., for
366 collection account of the City National Bank, Fort Worth, Texas. S. W. Lomax, cash'r. No. 8603. E. G. Moses, tell'r. C. H. Wittington.

$1,100.00. WILL'S POINT, *July* 8, 1879.

Ten days after date pay to the order of W. A. Williams one thousand one hundred dollars, value received, and charge the same to account of—

No. 10. JNO. A. ONEAL.

To Hunter, Evans & Co., National Stock Yards, East St. Louis, Ills.

[Written across the face:] Accepted. Hunter, Evans & Co.

(Endorsed:) Pay Wm. H. Thomson, cashier, or order. W. A. Williams. Pay to the order of G. W. Dausch, cash'r, for collection account of Boatmen's Saving Bank of St. Louis, Mo. Wm. H. Thomson, cashier. G. W. Dausch, cash'r.

$2,500.00. WILL'S POINT, *June 5th*, 1879.

At sight pay to the order of W. A. Williams two thousand & five hundred dollars, value received, and charge the same to account of—

No. 9. JNO. A. ONEAL.

To Hunter, Evans & Co., National Stock Yards, East St. Louis, Ills.

(Endorsed:) Pay Holt, Bivins & Corley or order. W. A. Williams Pay Bank of Commerce, St. Louis, or order, for account of Holt Bivins & Corley.

367 $1,015.00. WILL'S POINT, *July 4th*, 1879.

At sight pay to the order of W. A. Williams one thousand & fifteen dollars, value received, and charge the same to account of—

No. 64. JNO. A. ONEAL.

To Hunter, Evans & Co., National Stock Yards, East St. Louis, Ills.

(Endorsed:) Pay Wm. H. Thomson, cash'r, or order. W. A. Williams. Pay to the order of G. W. Dausch, cash'r, for collection account of Boatmen's Saving Bank, St. Louis, Mo. Wm. H. Thomson, cashier. G. W. Dausch, cash'r.

$100.90. WILL'S POINT, TEX., *July 1st*, 1879.

At sight pay to the order of W. G. Voiers, cashier Red River B'k, one hundred $\frac{90}{100}$ dollars, value received, and charge the same to account of—

No. 60. JNO. A. ONEAL.

To Hunter, Evans & Co., Nat'l Stock Yards, East St. Louis, Ills.

(Endorsed:) C. H. Wittington. Pay Wm. H. Thomson, cashier, or order, for collection for Red River County Bank, Clarksville,

Texas. G. W. Voiers, cashier. Pay to the order of G. W. Dausch, cash'r, for collection account of Boatmen's Saving Bank, St. Louis, Mo. Wm. H. Thomson, cashier. Geo. W. Dausch, cash'r.

$1,410.00. TERRELL, *July 5th*, 1879.

368 At sight pay to the order of Holt, Bivins & Corley fourteen hundred & ten dollars, value received, and charge the same to account of Terrell business.

No. 8. JNO. A. ONEAL.

To Mess. Hunter, Evans & Co., East St. Louis, Ills.

(Endorsed:) Pay Bank of Commerce, St. Louis, or order, for account of Holt, Bivins & Corley. Received payment Jul. 7, 1879. J. C. Van Blarcom, cashier.

$1,000.00. JULY 1ST, 1879.

At sight pay to the order of W. A. Williams one thousand dollars, value received, and charge the same to account of—

JNO. A. ONEAL.

To Hunter, Evans & Co., National Stock Y'ds, East St. Louis, Ills.

(Endorsed:) Pay Wm. H. Thomson, cash'r, or order. W. A. Williams. Pay to the order of Geo. W. Dausch, cashier, for collection account of Boatmen's Saving-Bank, St. Louis, Mo. Wm. H. Thomson, cashier. Geo. W. Dausch, cash'r.

$1,909.50. FT. WORTH, TEX., 6, 30, 1879.

Pay to the order of S. W. Lomax, cash'r, nineteen hundred & nine $\frac{50}{100}$ dollars, value received, and charge to account of—

JNO. A. ONEAL.

369 To Hunter, Evans & Co., St. Louis, Ill.

(Endorsed:) Pay to the order of G. H. Goddard, cas., for collection account of the City National Bank of Fort Worth, Texas. S. W. Lomax, cash'r. No. 8469. E. G. Moses, tell'r. C. H. Wittington.

$4,004.18. FT. WORTH, TEX., 6, 30, 1879.

Thirty days — pay to the order of S. W. Lomax, cash., four thousand & four $\frac{18}{100}$ dollars, value received, and charge to account of—

JNO. A. ONEAL.

To Hunter, Evans & Co., E. St. Louis.

(Endorsed:) Pay to the order of G. H. Goddard, cas., for collection account of the City National Bank of Fort Worth, Texas. S. W. Lomax, cash'r. No. 8461. E. G. Moses, tell'r. C. H. Wittington.

$1,800.00. WILL'S POINT, *June* 23, 1879.

At sight pay to the order of Geo. W. Voiers, cashier, eighteen hundred dollars, value received, and charge the same to account of—

JNO. A. ONEAL.

To Hunter, Evans & Co., Nat'l Stock Yards, East St. Louis, Ill.

(Endorsed:) Pay W. H. Thomson, cashier, or order, for collection for Red River County Bank, Clarksville Texas. G. W. Voiers, cashier. Pay to the order of G. W. Dausch, cash'r, for collection account of Boatmen's Saving-Bank, St. Louis, Mo. Wm. H. Thomson, cashier. G. W. Dausch, cash'r.

370

$1,522.50. WILL'S POINT, TEX., *June 24th*, 1879.

Thirty days after date pay to the order of W. A. Williams fifteen hundred twenty-two & $\frac{50}{100}$ dollars, value received, and charge the same to account of—

No. 5. JNO. A. ONEAL.

To Hunter, Evans & Co., Nat'l Stock Yards, East St. Louis, Mo.

(Endorsed:) Pay Wm. H. Thomson, cash'r, or order. W. A. Williams. Pay to the order of G. W. Dausch, cash'r, for collection account of Boatmen's Saving-Bank, St. Louis, Mo. Wm. H. Thomson, cashier. G. W. Dausch, cash.

$2,681.48. TERRELL, TEXAS, *June 25th*, 1879.

At sight pay to the order of Holt, Bivins & Corley twenty-six hundred eighty-one $\frac{48}{100}$ dollars, value received, and charge the same to account of—

No. 6. JNO. A. ONEAL.

To Hunter, Evans & Co., Nat. Stock Y'ds, East St. Louis, Ill.

(Endorsed:) Pay Bank of Commerce, St. Louis, or order for account of Holt, Bivins & Corley. Received payment June 27, 1879. J. C. Van Blarcom, cashier.

371

$2,708.02. TERRELL, TEX., *June* 25, 1879.

Thirty days after date pay to the order of Holt, Bivins & Corley twenty-seven hundred eight & $\frac{2}{100}$ dollars, value received, and charge the same to account of—

No. 7. JNO. A. ONEAL.

To Hunter, Evans & Co., Nat. Stock Y'ds, East St. Louis.

[Written across the face:] Accepted. Hunter, Evans & Co.

(Endorsed:) Pay Bank of Commerce, St. Louis, or order, for account of Holt, Bivins & Corley.

$1,000.00. WILL'S POINT, TEX., *June* 23, 1879.

At sight pay to the order of W. A. Williams one thousand dollars, value received, and charge the same to account of—

No. 3. JNO. A. ONEAL.

To Hunter, Evans & Co., Nat'l Stock Yards, East St. Louis, Ill.

(Endorsed:) Pay Wm. H. Thomson, cash., or order. W. A. Williams. Pay to the order of G. W. Dausch, cashier, for collection account of Boatmen's Savings Bank, St. Louis, Mo. Wm. H. Thomson, cashier. G. W. Dausch, cash'r.

372 $1,150.00. WILL'S POINT, TEX., *June 19th*, 1879.

At sight pay to the order of W. A. Williams eleven hundred and fifty dollars, value received, and charge the same to account of—

No. 58. JNO. A. ONEAL.
J. M. L.

To Hunter, Evans & Co., Nat'l Stock Y'ds, East St. Louis, Ills.

(Endorsed:) Pay Wm. H. Thomson, cash'r, or order. W. A. Williams. Pay to the order of G. W. Dausch, cash'r, for collection account of Boatmen's Saving- Bank, St. Louis, Mo. Wm. H. Thomson, cashier. G. W. Dausch, cash.

$900.00. WILL'S POINT, TEXAS, *June* 21, 1879.

At sight pay to the order of W. A. Williams nine hundred dollars, value received, and charge the same to account of—

No. 59. JNO. A. ONEAL.
J. M. L.

To Hunter, Evans & Co., National Stock Yards, East St. Louis, Ill.

(Endorsed:) Pay Wm. H. Thomson, cash'r, or order. W. A. Williams. Pay to the order of G. W. Dausch, cash'r, for collection account of Boatmen's Savings Bank, St. Louis, Mo. Wm. H. Thomson, cashier. G. W. Dausch, cash.

$3,213.90. FORT WORTH, 6, 14, 1879.

373 Pay to the order of S. W. Lomax, cash., thirty-two hundred & thirteen $\frac{90}{100}$ dollars, value received, and charge the same to account of—

JNO. A. ONEAL.

To Hunter, Evans & Co., East St. Louis, Ill.

(Endorsed:) Pay to the order of Valley Nat. Bank on collection account of City National Bank of Ft. Worth, Texas. A. M. Britton, V. P. 8290. E. G. Moses, tell'r. C. H. Wittington.

$1,162.72. CLARKSVILLE, TEXAS, *June* 9, 1879.

At sight pay to the order of Red River Co. Bank eleven hundred sixty-two $\frac{72}{100}$ dollars, value received, and charge the same to account of—

No. 65. JNO. A. ONEAL.
J. M. L.

To Hunter, Evans & Co., St. Louis, Mo.

(Endorsed:) Pay W. H. Thompson, cashier, or order, for collection for Red River County Bank, Clarksville, Texas. G. W. Voiers, cashier. Pay to the order of G. W. Dausch, cash'r, for collection account of Boatmen's Saving- Bank, St. Louis, Mo. Wm. H. Thomson, cashier. G. W. Dausch, cash'r.

$700.00. WILL'S POINT, TEXAS, *June* 7, 1879.

At sight pay to the order of W. A. Williams seven hundred dollars, value received, and charge the same to account of—

No. 67. JNO. A. ONEAL.
J. M. L.

374 To Hunter, Evans & Co., National Stock Yards, East St. Louis, Ill.

(Endorsed:) Pay Wm. H. Thomson, cash'r, or order. W. A. Williams. Pay to the order of G. W. Dausch, cash'r, for collection account of Boatmen's Saving-Bank, St. Louis, Mo. Wm. H. Thomson. G. W. Dausch, cash'r.

$4,135.46. FT. WORTH, TEX., *June* 7, 1879.

At sight pay to the order of S. W. Lomax, cashier, forty-one hundred thirty-five $\frac{46}{100}$ dollars, value received, and charge to account of—

JNO. A. ONEAL.

To Hunter, Evans & Co., East St. Louis, Ill.

(Endorsed:) Pay to the order of G. H. Goddard, cash., for collection account of the City National Bank of Ft. Worth, Texas. S. W. Lomax, c'h'r. No. 8203. E. G. Moses, tell'r. C. H. Wittington.

$4,171.11. FT. WORTH, TEX., *June* 7, 1879.

Ten days from date pay to the order of S. W. Lomax, cashier, forty-one hundred & seventy-one $\frac{11}{100}$ dollars, value received, and charge the same to account of—

JNO. A. ONEAL.

To Hunter, Evans & Co., East St. Louis, Ill.

[Written across the face:] Accepted. Hunter, Evans & Co.

(Endorsed:) Pay to the order of G. H. Goddard, cash'r, for
375 collection account of The City National Bank of Fort Worth, Texas. S. W. Lomax, cash'r. No. 2066. E. G. Moses, tell'r. C. H. Wittington.

$700.00. WILL'S POINT, TEXAS, *May* 31, 1879.

At sight pay to the order of W. A. Williams seven hundred dollars, value received, and charge the same to account of—

No. 65. JNO. A. ONEAL.
J. M. L.

To Hunter, Evans & Co., National Stock Yards, East St. Louis, Ill.

(Endorsed:) Pay Wm. H. Thomson, cash'r, or order. W. A. Williams. Pay to the order of G. W. Dausch, cashier, for collection account of Boatmen's Saving-Bank, St. Louis, Mo. Wm. H. Thomson, cashier. G. W. Dausch, cash'r.

$1,000.00. WILL'S POINT, TEX., *May* 26, 187

Pay to the order of W. A. Williams one thousand dollars, v
received, and charge the same to account of—
No. 63. JNO. A. ONEA
J. M. L.

To Hunter, Evans & Co., Nat'l Stock Yards, East St. Louis,

(Endorsed:) Pay Wm. H. Thomson, cash'r, or order. W. A.
liams. Pay to the order of G. W. Dausch, cashier, for collection
count of Boatmen's Saving- Bank, St. Louis, Mo. Wm.
376 Thomson, cashier. G. W. Dausch, cash'r.

$500.00. WILL'S POINT, TEXAS, *May* 26, 187

Pay to the order of W. A. Williams five hundred dollars, va
received, and charge the same to account of—
No. 64. JNO. A. ONEA
J. M. L.

To Hunter, Evans & Co., Nat'l Stock Yards, East St. Louis,

(Endorsed:) Pay Wm. H. Thomson, cash'r, or order. W. A.
liams. Pay to the order of G. W. Dausch, cash'r, for collection
count of Boatmen's Saving- Bank, St. Louis, Mo. Wm. H. Tho
son, cashier. G. W. Dausch, cash'r.

$750.00. WILL'S POINT, TEX., *May* 23*rd*, 187

At sight pay to the order of W. A. Williams seven hundred
fifty dollars, value received, and charge the same to account of—

No. 62. JNO. A. ONEAL
J. M. L.

To Hunter, Evans & Co., Nat'l Stock Yards, East St. Louis, Ill

(Endorsed:) Pay Wm. H. Thomson, cash'r, or order. W. A. W
liams. Pay to the order of G. W. Dausch, cash'r, for collection
count of Boatmen's Saving Bank, St. Louis, Mo. Wm. H. Tho
son, cashier. G. W. Dausch, cash'r.

$1,000.00. WILL'S POINT, TX., *May* 22, 1879

377 At sight pay to the order of W. A. Williams one thousa
dollars, value received, and charge the same to account o
No. 61. JNO. A. ONEAL
J. M. L.

To Hunter, Evans & Co., National Stock Yards, East St. Lou
Mo.

(Endorsed:) Pay Wm. H. Thomson, cash'r, or order. W.
Williams. Pay to the order of G. W. Dausch, cash'r, for collecti
account of Boatmen's Saving- Bank, St. Louis, Mo. W. H. Tho
son, cashier. G. W. Dausch, cash'r.

$1,500.00. WILL'S POINT, TEX., *May 6th*, 1879.

Thirty days after date pay to the order of Holt, Bevens & Corley fifteen hundred dollars, value received, and charge the same to account of—

No. 57. JNO. A. ONEAL.

To Hunter, Evans & Co., East St. Louis, Ill.

[Written across the face:] Accepted. Hunter, Evans & Co.

(Endorsed:) Pay Bank of Commerce, St. Louis, or order, for account of Holt, Bivins & Corley. E. O. Bestors, coll.

$1,015.00. WILL'S POINT, *May 5th*, 1879.

Thirty days after date pay to the order of Holt, Bivens & Corley one thousand & fifteen dollars, value received, and charge the same to account of—

No. 56. JNO. A. ONEAL.

To Hunter, Evans & Co., East St. Louis, Ills.

[Written across the face:] Accepted. Hunter, Evans & Co.

(Endorsed:) E. C. Berloss, coll. Pay Bank of Commerce,
378 St. Louis, or order, for account of Holt, Bivins & Corley.

$408.00. WILL'S POINT, TEX., *May 10th*, 1879.

Forty-five days after date pay to the order of Holt, Bivens & Corley four hundred & eight dollars, value received, and charge the same to account of *ac.* money advanced to J. G. Moore, at Terrell.

No. 59. JNO. A. ONEAL.

To Hunter, Evans & Co., East St. Louis, Ill.

[Written across the face:] Accepted. Hunter, Evans & Co.

(Endorsed:) Pay Bank of Commerce, St. Louis, or order, for account of Holt, Bivens & Corley.

$2,113.60. FT. WORTH, TEX., 5, 12*th*, 1879.

Sixty days after date pay to the order of S. W. Lomax, cash., twenty-one hundred & thirteen $\frac{60}{100}$ dollars, value received, and charge to account of—

JNO. A. ONEAL.

To Mess. Hunter & Evans, E. St. Louis, Ills.

[Written across the face:] Accepted. Hunter, Evans & Co.

(Endorsed:) Pay to the order of Valley Nat. Bank, St. Louis, for collection account of the National Bank of Ft. Worth, Texas. A. M. Britton, V. P. E. G. Moses, tell'r. C. H. Wittington.

$1,305.44. WILL'S POINT, TEX., *May 10th*, 1879.

Thirty days after date pay to the order of W. A. Williams thirteen hundred five & ^{44} dollars, value received, and charge the same to account of—

No. 60. JNO. A. ONEAL.

To Hunter, Evans & Co., East St. Louis, Ill.

[Written across the face:] Accepted. Hunter, Evans & Co.

379 (Endorsed:) Pay Wm. H. Thomson, cash., or order. W. A. Williams. Pay to the order of G. W. Dausch, cash'r, for collection account of Boatmen's Saving- Bank, St. Louis, Mo. Wm. H. Thomson, cashier. G. W. Dausch, cash'r.

$1,000.00. WILL'S POINT, TEX., *May 10th*, 1879.

At sight pay to the order of W. A. Williams one thousand dollars, value received, and charge the same to account of—

No. 58. JNO. A. ONEAL.

To Hunter, Evans & Co., East St. Louis, Mo.

(Endorsed:) Pay Wm. H. Thomson, cash'r, or order. W. A. Williams. Pay to the order of G. W. Dausch, cash'r, for collection account of Boatmen's Saving- Bank, St. Louis, Mo. Wm. H. Thomson, cashier. G. W. Dausch, cash.

$530.00. WILL'S POINT, TEX., *May 6th*, 1879.

Thirty days from date pay to the order of Holt, Bivins & Corley five hundred and thirty dollars, value received, and charge the same to account of—

No. 55. JNO. A. ONEAL.

To Hunter, Evans & Co., Nat'l Stock Y'ds, East St. Louis, Ills.

[Written across the face:] Accepted. Hunter, Evans & Co.

(Endorsed:) Pay Bank of Commerce, St. Louis, or order, for account of Holt, Bivins & Corley. Received payment, Jan. 18, 1879. J. C. Van Blarcom, cashier.

380 $3,075.00. WILL'S POINT, TEX., *May 5th*, 1879.

Sixty days after date pay to the order of Holt, Bivens & Corley three thousand & seventy-five dollars, value received, and charge the same to account of—

No. 52. JNO. A. ONEAL.

To Hunter, Evans & Co., East St. Louis, Ill.

[Written across the face:] Accepted. Hunter, Evans & Co.

(Endorsed:) Pay Bank of Commerce, St. Louis, or order for account of Holt, Bivens & Corley.

$1,787.67. FT. WORTH, TEX., 5, 3*d*, 1879.

On the 15th June next pay to the order of S. W. Lomax, cash., seventeen hundred & eighty-seven ^{67} dollars, value received, and charge to account of—

JNO. A. ONEAL.

To Hunter & Evans, E. St. Louis, Ills.

[Written across the face:] Accepted. Hunter, Evans & Co.

(Endorsed:) Pay to the order of G. H. Goddard, cash., for collection account of the City National Bank of Ft. Worth, Texas. S. W. Lomax, cash'r. No. 1968. E. G. Moses, tell'r. C. H. Wittington.

$1,500.00. WILL'S POINT, TEXAS, *Feb'y 17th*, 1879.

At sight pay to the order of Holt, Williams & Co. fifteen hundred dollars, value received, and charge the same to account of—

No. 14. JNO. A. ONEAL.

To Hunter and Evans, Nat'l Stock Yards, E. St. Louis, Ills.

381 (Endorsed:) Pay Wm. H. Thomson, cash'r, or order. Holt, Williams & Co. Pay to the order of G. W. Dausch, cash., for collection account of Boatmen's Saving- Bank, St. Louis, Mo. Wm. H. Thomson, cashier. G. W. Dausch, cash. C. A. Carpenter.

$200.00. WILL'S POINT, TEX., *March* 1, 1879.

At sight pay to the order of Holt, Williams and Co. two hundred dollars, value received, and charge the same to account of—

No. 3. JNO. A. ONEAL.

To Hunter and Evans, Nat. Stock Y'ds, East St. Louis, Ills.

(Endorsed:) Pay Wm. H. Thomson, cash'r, or order. Holt, Williams & Co. Pay to the order of G. W. Dausch, cash'r, for collection account of Boatmen's Saving- Bank, St. Louis, Mo. Wm. H. Thomson, cashier. Geo. W. Dausch, cash. C. A. Carpenter.

$3,141.00. FT. WORTH, TEX., 3, 17*th*, 1879.

Ninety days after date pay to the order of S. W. Lomax, cash., three thousand one hundred & forty-one dollars, value received, and charge to account of—

JNO. A. ONEAL.

To Hunter & Evans, East St. Louis.

[Written across the face:] Accepted. Hunter, Evans & Co.

(Endorsed:) Pay to the order of G. H. Goddard, cash., for collection account of the City National Bank of Ft. Worth, Texas.

382 S. W. Lomax, cash. No. 1831. E. G. Moses, tell-r. C. H. Wittington.

$1,000.00. WILL'S POINT, TEXAS, *Mar. 25th*, 1879.

At sight pay to the order of Holt, Williams & Co. one thousand dollars, value received, and charge the same to account of—

No. 42. JNO. A. ONEAL.

To Hunter, Evans & Co., Nat. Stock Y'ds, East St. Louis, Ill.

(Endorsed:) Pay Wm. H. Thomson, cash'r, or order. Holt, Williams & Co. Pay to the order of G. W. Dausch, cash'r, for collection account of Boatmen's Saving- Bank, St. Louis, Mo. Wm. H. Thomson, cashier. G. W. Dausch, cash.

$204.54. FT. WORTH, TEX., *April 1st*, 1879.

May 1st, 1879, pay to the order of S. W. Lomax, cashier, two hundred & four ^{54} dollars, value received, and charge to account of—

JNO. A. ONEAL.

To Hunter, Evans & Co., East St. Louis, Ills.

[Written across the face:] Accepted. Hunter, Evans & Co.

(Endorsed:) Pay to the order of Valley Nat. Bank for collection account of the City National Bank of Ft. Worth, Texas. S. W. Lomax, cash'r. No. 1889. E. G. Moses, tell-r. C. H. Wittington.

$1,300.00. WILL'S POINT, TEX., *Apr. 4th*, 1879.

At sight pay to the order of Holt, Williams & Co. thirteen hundred dollars, value received, and charge the same to account of—

No. 45. JNO. A. ONEAL.

383 To Hunter, Evans & Co., Nat. Stock Y'ds, East St. Louis, Ills.

(Endorsed:) Pay Wm. H. Thomson, cash'r, or order. Holt, Williams & Co. Pay to the order of G. W. Dausch, cash'r, for collection account of Boatmen's Saving- Bank, St. Louis, Mo. Wm. H. Thomson, cashier. G. W. Dausch, cash.

$3,659.85. FT. WORTH, TEX., *Apr.* 14, 1879.

June 1st, 1879, pay to the order of S. W. Lomax, cashier, thirty-six hundred & fifty-nine ^{85} dollars, value received, and charge to account of—

JNO. A. ONEAL.

To Hunter, Evans & Co., East St. Louis, Ills.

[Written across the face:] Accepted. Hunter, Evans & Co.

(Endorsed:) Pay to the order of G. H. Goddard, cash., for collection account of the City National Bank of Ft. Worth, Texas. S. W. Lomax, cash. No. 1918. E. G. Moses, tell-r. C. H. Wittington.

$2,525.00. WILL'S POINT, TEX., *April 15th*, 1879.

On the 1st day of May next pay to the order of Holt, Williams & Co. twenty-five hundred and twenty-five dollars, value received, and charge the same to account of—

No. 49. JNO. A. ONEAL.

To Hunter, Evans & Co., National Stock Yards, East St. Louis, Ill.

[Written across the face:] Accepted. Hunter, Evans & Co.

384 (Endorsed:) Pay Wm. H. Thomson, cash., or order. Holt, Williams & Co. Pay to the order of G. W. Dausch, cash'r, for collection account of Boatmen's Saving- Bank, St. Louis, Mo. Wm. H. Thomson, cashier. G. W. Dausch, cash.

Letter.

Hunter, Evans & Co., East St. Louis:

Please pay bearer, J. W. Orr, in charge of two cars cattle, five dollars, & charge to my account.

Will's Point, Tex., May 10th, 1879.

JNO. A. ONEAL.

O K.

R. D. H.

SCHEDULE "C."

FORT WORTH, TEXAS, *Oct.* 18*th*, 1879.

Mess. Hunter, Evans & Co., National Stock Yards, Ills.

GENTS: We shipped you to-day 168 beeves, which please sell and place to credit of my ac. You will please pay McMiller, in charge of cattle shipped yesterday, $20.00, and oblige,

Yours truly, JOHN A. ONEAL,
ALLEN.

WILL'S POINT, TEXAS, *Aug.* 30*th*, 1879.

H., E. & Co., East St. Louis, Ill.

On road—GENTS: Pleas — McMiller eight dollars and pleas protect draft to his wife for $40.00, for Sipor; will write again at Griffin. Pleas let me hear all about my cattle & market at Griffin.

Yours, JNO. A. ONEAL.

385 SCHEDULE "D."

Oneal & Jones in Ac. Hunter, Evans & Co.

DR.

1879.		1879.	
May 9. To cash draft	$1,600 00	May 12. By pro. 60 cat	1,570 60
		June 4. " J. A. Oneal	29 40
	$1,600 00		1,600 00

$1,600.00. WILL'S POINT, TEXAS, *May* 5*th*, 1879.

At sight pay to the order of Holt, Williams & Co. sixteen hundred dollars, value received, and charge the same to account of Oneal & Jones, Honey Grove, Texas.

JNO. A. ONEAL.

To Hunter, Evans & Co., East St. Louis, Ill.

(Endorsed:) Pay W. A. Williams or order. Holt, Williams & Co. Pay Wm. H. Thomson, cash'r, or order. W. A. Williams. Pay to the order of G. W. Dausch, cash'r, for collection account of Boatmen's Saving- Bank, St. Louis, Mo. Wm. H. Thomson, cashier. G. H. Dausch, cash.

$2,976.08. FORT WORTH, 6, 14, 1879.

Ten days after date pay to the order of S. W. Lomax, cash., twenty-nine hundred & seventy-six ^{08} dollars, value received, and charge the same to account of—

ONEAL & ADKINSON.

To Hunter, Evans & Co., East St. Louis, Ills.

[Written across the face:] Accepted. Hunter, Evans & Co.

(Endorsed:) Pay to the order of Valley Nat. Bank, collection account of the City National Bank of Ft. Worth, Texas. A. M. Britton, V. P. No. 8289. E. G. Moses, tell-r. C. H. Wittington.

389

$1,285.87. FT. WORTH, TEX., *June* 26, 1879.

At sight pay to the order of S. W. Lomax, cashier, twelve hundred & eighty-five $\frac{87}{100}$ dollars, value received, and charge to account of—

ONEAL & ADKINSON.

To Hunter, Evans & Co., East St. Louis, Ills.

(Endorsed:) Pay to the order of G. H. Goddard, cash'r, for collection account of the City National Bank of Fort Worth, Texas. S. W. Lomax, cash'r. No. 8415. E. G. Moses, tell-r. C. H. Wittington.

$690.70. FT. WORTH, *July* 12, 1879.

At sight pay to the order of S. W. Lomax, cash., six hundred & ninety & $\frac{70}{100}$ dollars, value received, and charge the same to account of—

No. 16. ONEAL & ADKINSON.

To Hunter, Evans & Co., East St. Louis, Ills.

(Endorsed:) Pay to the order of Valley Nat. B'k for collection account of the City National Bank of Ft. Worth, Texas. Jno. Nichols, pres. No. 8622. E. G. Moses, tell-r. C. H. Wittington.

$840.50. FT. WORTH, *July* 23, 1879.

At sight pay to the order of S. W. Lomax, cash'r, eight hundred and forty $\frac{50}{100}$ dollars, value received, and charge the same to account of—

390

No. 76. ONEAL & ATKINSON.

To Hunter, Evans & Co., East St. Louis, Ills.

(Endorsed:) Pay to the order of G. H. Goddard, cash'r, for collection account of the City National Bank of Fort Worth, Texas. S. W. Lomax, cash'r. No. 8710. E. G. Moses, tell'r. C. H. Wittington.

$1,033.68. FT. WORTH, TEX., 7, 24*th*, 1879.

Forty days after date pay to the order of S. W. Lomax, cash., ten hundred & thirty-three & $\frac{68}{100}$ dollars, value received, and charge to account of—

No. 77. ONEAL & ATKINSON.

To Hunter, Evans & Co., East St. Louis, Ill.

[Written across the face:] Accepted. Hunter, Evans & Co.

(Endorsed:) Pay to the order of G. H. Goddard, cash'r, for collection account of the City National Bank of Fort Worth, Texas. S. W. Lomax, cash'r. No. 2188. E. G. Moses, tell'r. C. H. Wittington.

$1,000.00. WILL'S POINT, *Aug.* 15*th*, 1879.

At sight pay to the order of S. W. Lomax, cashier, one thousand dollars, value received, and charge the same to account of—

No. 24. ONEAL & ATKINSON.

To Hunter, Evans & Co., East St. Louis, Ills.

391 (Endorsed:) Pay to the order of G. H. Goddard, cash'r, for collection account of the City National Bank of Fort Worth, Texas. S. W. Lomax, cash'r. No. 8930. E. G. Moses, tell'r. C. H. Wittington.

$3,762.55. FT. WORTH, TEX., 9, 8*th*, 1879.

One day after sight pay to the order of S. W. Lomax, cash., thirty-seven hundred & sixty-two & $\frac{55}{100}$ dollars, value received, and charge to account of—

ONEAL AND ATKINSON,
Per ALLEN.

To Hunter, Evans & Co., East St. Louis, Ills.

[Written across the face:] Accepted Sept. 10th, '79. Hunter, Evans & Co.

(Endorsed:) Pay to the order of H. L. Newman & Co., for collection account of the City National Bank of Fort Worth, Texas. S. W. Lomax, cash'r. No. 9195.

$829.98. FORT WORTH, 10, 8*th*, 1879.

Pay to the order of S. W. Lomax, cash'r, eight hundred & twenty-nine $\frac{98}{100}$ dollars, value received, and charge the same to account of—

ONEAL & ATKINSON.

To Hunter, Evans & Co., East St. Louis, Ills.

(Endorsed:) Pay to the order of G. H. Goddard, cash'r, for collection account of the City National Bank of Fort Worth, Texas. S. W. Lomax, cash'r. No. 9560. E. G. Moses, tell'r. C. H. Wittington.

392 $1,305.07. FT. WORTH, TEX., 10, 22, 1879.

Pay to the order of S. W. Lomax, cash., thirteen hundred & five & ^{07} dollars, value received, and charge to account of—

ONEAL AND ATKINSON,
ALLEN.

To Hunter, Evans & Co., East St. Louis, Ills.

(Endorsed:) Pay to the order of G. H. Goddard, cash., for collection account of the City National Bank of Fort Worth, Texas. S. W. Lomax, cash'r. No. 9745. E. G. Moses, tell'r. C. H. Wittington.

$1,871.02. FT. WORTH, *Oct.* 25, 1879.

At sight pay to the order of City National Bank eighteen hundred seventy-one ^{02} dollars, value received, and charge the same to account of—

ONEAL & ATKINSON.

To Hunter, Evans & Co., East St. Louis, Ills.

(Endorsed:) Pay to the order of H. L. Newman & Co. for collection account of the City National Bank of Ft. Worth, Texas. A. M. Britton, V. P. No. 9804.

$1,860.72. 11, 25, 1879.

At sight pay to the order of S. W. Lomax, cashier, eighteen hundred & sixty $\frac{72}{100}$ dollars, value received, and charge the same to account of—

No. 56. ONEAL & ADKINSON.

To Hunter, Evans & Co., East St. Louis, Ill.

(Endorsed:) Pay to the order of G. H. Goddard, cash., for
393 collection account of the City National Bank of Ft. Worth, Texas. S. W. Lomax, cash'r. No. 10047. E. G. Moses, tell'r. C. H. Wittington.

SCHEDULE "E."

$11,000. NAT'L ST'K Y'DS, ILLS., *Aug.* 22*d*, 1879.

Sixty days after date I promise to pay to the order of Hunter, Evans & Co. eleven thousand dollars, at their office, with int. at 10% per annum, value received.

JNO. A. ONEAL.

(Endorsed:) Hunter, Evans & Co. H. L. Newman & Co.

$11,000. NATIONAL STOCK Y'DS, ILLS., *Aug.* 22, 1879.

Forty days after date I promise to pay to the order of Hunter, Evans & Co. eleven thousand dollars, at their office, with 10% int. after maturity, value received.

JNO. A. ONEAL.

(Endorsed:) Hunter, Evans & Co. H. L. Newman & Co.

SCHEDULE "F."

PHILADELPHIA, *Sept.* 20, '79.

Sales 120 cattle by J. F. Sadler & Co., ac. Hunter, Evans & Co.

Sept. 20.	60, 59310 @ 3.45	2,046 19		
	60, 58620 3.40	1,993 08		
			4,039	27
	Charges fr't & yards	992 81		
	Commission	240 00		
	Shipper	9 00		
			1,241	81
			$2,797	46

E. & O. E. J. F. SADLER & CO.

394 PHILADELPHIA, *Sept.* 22, 1879.

Mr. Hunter, E. & Co. to the Philadelphia StockYard Co., Dr.

Freight bills		879	23
Siding, 3; yardage, 1.20; cattle, 48.00	51 00		
3,129 hay	62 58		
		113	58
		992	81

PHILADELPHIA STOCK YARD,
THOMAS B. SHRIVER, *Tre's.*

SCHEDULE "G."

CHICAGO, 5, 24, 1880.

Robert Strahorn & Co., Sold for Account of Hunter, E. & Co., Ac. Oneal & B.

	Purchasers.	Cattle.	Weight.	Price.	
1879. Nov. 8	Vogle	126	119,330	2⅞	3,430 74
Charges:					
Freight				180 00	
Yardage				31 50	
2,400 lbs. hay				36 00	
Commission				63 00	
					310 50
					3,120 24

Duplicate.
E. & O. E.
R. S. & Co.

CHICAGO, 5, 24, 1880.

Robert Strahorn & Co., Sold for Account of Hunter, E. & Co., Ac. J. A. Oneal.

	Purchaser.	Cattle.	Weight.	Price.	
1879.					
Nov. 8	J. Vogle	166	151,230	2⅞	4,347 86
2 dead					10 00
					$4,357 86
Charges:					
Freight				240 00	
Yardage				41 50	
3,200 lbs. hay				48 00	
Commission				83 00	
					412 50
					3,945 36

E. & O. E.
R. S. & Co.

395 SCHEDULE "I."

Certificate of Stock Inspection.

WILL'S POINT, TEXAS, *Sept.* 19, 1879.

I hereby certify that I have this day inspected 110 head of cattle owned by J. A. Oneal and shipped by him to Strayhom & Co., Chicago, bought of ——, with marks and brands as follows:

(See diagram marked 395.)

I find the owner has in all respects complied with the provisions of an act of the Legislature, approved August 23, 1876, entitled "An act to encourage stock-raising and for the protection of stock-raisers."

[SEAL.] C. W. SWANK, *Inspector.*

(Endorsed:) Loaded in cars. T. & P. 5176, 5169, 5115, 5193, 5050. Date, Sept. 19th, 1879.

396 *Schedule "I"—Continued.*

WILL'S POINT, TEXAS, 2, 15*th*, 1880.

Mess. Hunter & Evans, East St. Louis, Ills.

GENTS: Received your statement, which is not right. I see you have me charged with W. Hunter's —, Dec. 5, for $652.53, which I know nothing about, and I told W. Hunter not to draw on you in my name for anything, and you have a letter to that effect in your

No Head.	Sex.	Marks	Brands
19	M		ON
1	M		R
1	M		TJ
1	M		No Brand
22	In Tot		5776
1	M		D
1	M		D
20	M		ON
22	In Tot		5769
1			Hip Split
1	F		3
1	ox		4
19	Mixed		ON
22	In		2000

No Head	Sex	Marks	Brands
1	M		No Brand
1	M		F
20	Mixed		ON
22	In Tot		5793
1	M		3
1	M		BP
1	M		8V
1	M		V
1	M		No Brand
17	M		
22	Mixed		ON
In Tot			5050
110	Head In Total		

395

office. According to my books, I owe you $16,300.00. As to N. Y shipment have never received any ac. sale and never knew anything about it until I found it charged up to me, and cannot see what right you have to do so. As to this $652.53 by W. Hunter I will not submit to, as I did not authorize him to draw on you, and if I had have owed him he had no right to draw a draft on you for it, for you had just refused to pay my own draft, so you will have to look to Mr. Hunter for it, as it will take all the means I can raise this year to square what I know I owe without paying other parties' drafts.

Yours, JNO. A. ONEAL.

(Pl'ffs' testimony here closes.)

397 *Defendants' Evidence.*

Depositions of Robert McCart, S. W. Lomax, A. M. Britton, John Dawson, & John Nichols, witnesses for defendants, taken by D. D. Wall, a notary public of Tarrant county, Texas, and sworn to before him by McCart on the 13th May, 1882; by S. W. Lomax on the 24th May, 1882; by Britton on the 4th May, 1882; by Dawson on the 11th May, 1882, and Nichols on the 13th May, 1882.

Int'y 1st. What is your age and place of residence?

Answer of R. McCart. My name is Robert McCart, my age is 37 years, and my residence is Fort Worth, Texas.

Answer of S. W. Lomax. My name is S. W. Lomax, my age is thirty-five, & my residence is Ft. Worth, Texas.

Answer of A. M. Britton. My name is A. M. Britton, my age is 41 years, and my residence is at Ft. Worth, Texas.

Answer of John Nichols. My name is John Nichols, my age is forty-eight, & my residence is Ft. Worth, Texas.

Int'y 2nd. What is your office or occupation now, and what
398 was it on the 10th day of December, 1879?

Answer of R. McCart. My occupation is and was at said time an attorney-at-law.

Answer of Lomax. I am now the cashier of the City National Bank of Fort Worth, and was its cashier on the 10th day of Dec., 1879.

Answer of Britton. I am now the president of the City National Bank of Fort Worth, Texas, and on the 10th day of December, 1879, I was the vice-president of the City National Bank of Fort Worth, Texas.

Answer of Nichols. I am now the vice-president of the City National Bank, and on the 10th day of December, 1879, I was its president.

Int'y 3rd. Are you acquainted with the parties to this suit, and what, if any, connection or relation do you have or hold to any of them?

Answer of McCart. I am acquainted with defendants; know Hunter, Evans & Co. by reputation; no connection or relation to any of them.

Answer of Lomax. I know the parties to this suit, except the person or persons composing the company part of Hunter, Evans & Co., and am an officer of the City National Bank.

399 Answer of Britton. I am acquainted with all the parties to this suit, and am an officer of the City National Bank, as above stated.

Answer of John Nichols. Yes; I am acquainted with them; am vice-president of the City National Bank, and am not now otherwise related to the parties.

Int'y 4th. State if the relation of creditor and debtor existed between defendant John Oneal and defendant City National Bank of Worth on the 10th day of December, 1879; and, if you say it did, then state which was the creditor and which the debtor and for what sum. State how or in what transactions or dealings such indebtedness accrued or originated; in what form it then was or how it was evidenced. State whether any security or securities were then or afterwards taken; and, if so, describe what they were and when taken. State by whom — or any of them were executed, and attach the originals, if you can, and, if you cannot do so, then attach copies thereof to your answer to this interrogatory, identifying the same by some mark referred to in your answer; and, if you cannot

400 attach either the original or a copy in any instance, then state, if you know, what has become of them, and state the substance of their contents as far as you are able to do so.

Answer of McCart. Of my own knowledge, I know nothing of the matters set forth in said interrogatory.

Answer of Lomax. On the 10th day of December, 1879, the defendant, John Oneal, was indebted to the City National Bank of Ft. Worth in the sum of nine thousand eight hundred and ten $\frac{11}{100}$ dollars, evidenced by said John Oneal's note for said sum of nine thousand eight hundred and ten $\frac{11}{100}$ dollars, payable to the order of John Nichols, then president of said City National Bank, and endorsed to said bank by said Nichols, without recourse, on the day said note was executed. The origin of said indebtedness was as follows: John Oneal was then and had been a long time previous thereto a dealer in cattle. During said time said Oneal had been buying cattle in Texas and shipping them to the plaintiffs, Hunter, Evans & Co., at East St. Louis, Illinois, Hunter, Evans & Co. being then in the cattle commission business. Prior to the 10th day of December, 1879,

401 the defendant, John Oneal, in his transactions with the City National Bank, was in the habit of buying cattle in Texas and paying for same by drawing his checks on the City National Bank, *and* such checks being honored by said bank, whether he had funds at his credit to meet such checks or not, the same being when paid charged to said Oneal on open account, said open account being covered from time to time by drafts drawn on said Hunter, Evans & Co. either by said Oneal or Wm. Hunter, the agent of said Hunter, Evans & Co., then living in Ft. Worth. All of the drafts so given were duly

honored by Hunter, Evans & Co., except one certain draft, dated November 15th, 1879, signed by said John Oneal and drawn on said Hunter, Evans & Co., for ninety-three hundred and fifty-four $\frac{3}{100}$ dollars, which draft was refused by Hunter, Evans & Co., and was protested for non-payment and returned to the City National Bank unpaid. On the 10th day of December, 1879, said Oneal, in order to settle his indebtedness to the bank arising from the non-payment of the draft for $9,354.03 by Hunter, Evans & Co., executed and delivered to said bank through John Nichols, its then president, his note for $9,810.11, it being the amount of said unpaid draft,
402 interest, and overdue on open account, and for the security of said note he also made and delivered to said Nichols a certain bill of sale. The note and bill of sale herein referred to are attached hereto and marked with my initials, "S. W. L."

Answer of Britton. On the 10th day of December, 1879, the defendant, John Oneal, was indebted to the City National Bank of Ft. Worth, Tex., in the sum of nine thousand eight hundred & ten & $\frac{11}{100}$ dollars ($9,810.11), evidenced by Jno. Oneal's note for $9,810.11, nine thousand eight hundred & ten & $\frac{11}{100}$ dollars, payable to the order of Jno. Nichols, the then president of the City Nat'l Bank, and by him endorsed to the bank, without recourse, on the day the note was executed. The original of said indebtedness was as follows: John Oneal was then and had been for a long time previous thereto a dealer in cattle. During said time the said Oneal has been buying cattle in Texas and shipping cattle to the plaintiffs, Hunter, Evans & Co., at East St. Louis, Ills., Hunter, Evans & Co. being then in the live stock commission business at that place. Prior to the 10th day of Dec., 1879, the defendant, Jno. Oneal, in his transactions was in the habit of buying cattle in Texas and paying for them by drawing his checks on the City Nat'l Bank of Ft. Worth,
403 his checks being honored in every instance, whether he had funds to meet them or not, the same being charged to Oneal's open account, said open account being covered from time to time either by draft of John Oneal on Hunter, Evans & Co. or the draft of Wm. Hunter on Hunter, Evans & Co., the said Wm. Hunter being at that time the authorized agent of said Hunter, Evans & Co. at Ft. Worth, Texas. The reason for this line of credit being given to the said Oneal by the said City Nat'l Bank was that on or or about the 17th day of March, 1879, the said Jno. Oneal, in company with Wm. Hunter, agent of Hunter, Evans & Co., came to the office of the City Nat'l Bank and said to me, I being its vice-president and in charge of its discounts and credits, that they wanted to make arrangements through the City Nat'l Bank for Jno. Oneal to buy cattle and ship same to Hunter, Evans & Co. at East St. Louis, Ills., the said Wm. Hunter, agent for Hunter, Evans & Co. then and there agreeing to guarantee the payment of any and all checks drawn against the bank by said Oneal or his, Oneal's, authorized agents. He at that time agreed further to settle the ac. of the said Oneal at any time by giving a draft on Hunter, Evans & Co. at East St. Louis, Ill., in case the said Oneal was not in Ft. Worth
404 to give the draft himself. Having had transactions with

said Hunter, Evans & Co. through their agent, Wm. Hunter, covering a period of some 2 years, and for large and various amounts of money, and having invariably found his statements correct and his actions approved by Hunter, Evans & Co., and relying solely upon the said guaranty of their agent, Wm. Hunter, and not being willing to trust John Oneal alone, I extended to them the credit asked. During the transactions had with said Oneal under the agreement for credit, made as above stated, a great many drafts, some drawn by Oneal and some by Wm. Hunter, on Hunter, Evans & Co., were taken by the City Nat'l Bank and proceeds credited to the ac. of the said Jno. Oneal, all of which drafts were paid except one, the last drawn by the said Oneal on the 15th day of Nov., 1879, on Hunter, Evans & Co. for $9,354.03, payment for which was refused by Hunter, Evans & Co., said draft being protested and returned dishonored to the City Nat'l Bank. As to the last-mentioned draft for $9,354.03, out of which the debt of Jno. Oneal to the City Nat'l Bank originated, I will state that on the day that this draft was made and delivered to the City Nat'l Bank I was in the
405 office of Wm. Hunter, agent of Hunter, Evans & Co. at Ft. Worth, and overhearing him, Wm. Hunter, use language calculated to throw discredit on the said Jno. Oneal, I became uneasy about the payment of said indebtedness, and knowing that Oneal proposed on that day to cover his indebtedness to the bank by a draft on Hunter, Evans & Co., based on cattle then in the shipping pens at Ft. Worth, Texas, and about to be shipped by Oneal to Hunter, Evans & Co., I asked Mr. Hunter if the draft proposed to be drawn by Oneal would be honored by Hunter, Evans & Co., and whether or not I had better take a bill of lading to order, which would insure the payment of the draft, or hold the cattle, to which he replied that Hunter, Evans & Co. would pay the draft; that they were obligated to pay it and were obliged to do it. Replying on this statement, I did not take the bill of lading, but allowed the draft to take its usual course, and on that day left the city of Ft. Worth on a trip to Motley Co., Texas, and was absent some weeks; hence was not in Ft. Worth when the draft was protested in East St. Louis and was not present when the note and bill of sale was executed to the bank by Jno. Oneal.

Answer of Nichols. John Oneal was indebted to the City National Bank, on the 10th day of December, in the sum of $9,810.11,
406 as shown by Oneal's note for that amount, which is attached to deposition of S. W. Lomax. This note was secured by bill of sale, which is also attached to Mr. Lomax'- deposition. Both note and bill of sale were made to me, but the bank being the real beneficiary therein and it being so understood by all the parties. Oneal's indebtedness to the bank originated in his business—that of buying cattle and shipping them to Hunter, Evans & Co., East St. Louis, Ills. He was in the habit of buying cattle and paying for them by his checks on the City National Bank. His account with the bank was covered from time to time by drafts on Hunter, Evans & Co., drawn either by him or Wm. Hunter, the agent of said Hunter, Evans & Co. at Ft. Worth. All said drafts were duly honored by Hunter,

Evans & Co., except the draft dated Nov. 15th, 1879, signed by John Oneal and drawn on Hunter, Evans & Co. for $9,354.03, which draft was refused by Hunter, Evans & Co. and was protested and returned to the bank unpaid. On the 10th Dec., 1879, said Oneal, to secure said draft, delivered to said bank his said note, payable to me, for $9,810.11, secured by said bill of sale.

Int'y 5th. If, in reply to the last preceding interrogatory
407 you have spoken of any indebtedness or securities, you will please state whether said indebtedness has been paid in whole or in part or otherwise changed or arranged, and if such security has been enforced or cancelled or in any manner changed or satisfied; if so, then describe fully such transaction or transactions, when had, and where, who were parties to the same, what has resulted from the same, or what has been done; and if not fully carried out, state to what extent, and why not fully carried out, and state the present status of the bank and attach instruments, letters, &c., relating thereto, stating what, if anything, you know about the origin or genuineness of such instruments.

Answer of McCart. I remember that on or about the 20th of March, 1880, a meeting was held in Ft. Worth, in my office, and there was present Wm. Hunter & Judge Watts, representing Hunter, Evans & Co.; John Oneal and his attorney, J. C. Kearby, and A. M. Britton and myself representing the City National Bank. Oneal was owing a large sum to plaintiffs and also to said bank. Oneal owned a considerable number of cattle, running in Van Zandt & adjoining counties, upon which he had given a lien or bill of sale to
408 plaintiffs and also to said bank. There was a dispute between Hunter, Evans & Co. and said bank as to which was the prior or better lien on said cattle. Oneal's indebtedness to the bank as evidenced by a note, and there was no dispute between him and the bank as to what he owed the bank, but his indebtedness to plaintiffs was on a running and open account, which was unsettled as to the amount. Oneal claimed that he did not owe pl'ffs the amount claimed by them. It was finally agreed by plaintiffs and the bank that Oneal should sell his cattle to John Dawson, and that they should be gathered and delivered and paid for and the proceeds divided between the bank and plaintiffs in accordance with the two contracts executed on that day and which are attached to A. M. Britton's depositions in this case, one of said contracts being drawn by myself, and was carefully read over and signed by defendant Dawson and Hunter, Evans & Co. by W. Hunter and the City National Bank by A. M. Britton, Judge A. T. Watts and myself witnessing the signatures; the other was written by either Judge Watts or Kearby and signed by Oneal, City National Bank, and Hunter, Evans & Co., and the signatures witnessed by Judge Watts, Kearby, and me. The bill of sale that the bank had to Oneal's cattle covered not only the
409 O. N. cattle, but included other brands of cattle, and the understanding of all parties being that the cattle which were to be gathered and sold to Dawson were to be gathered from all of Oneal's brands, and the fact that Hunter, Evans & Co.'s transfer of said cattle had not been properly recorded and besides having a

secret defeasance and having been given for the purpose of securing and unliquidated demand, and in order to avoid litigation and other considerations, I suppose, were the moving cause of these agreements and the reason why the parties agreed to pool their claims.

Answer of Lomax. At the time of the execution of the note, the bill of sale above-mentioned, said Oneal told me that early in the year 1879 he had arranged with Hunter, Evans & Co. for the payment of his drafts during the season, and to secure them in so doing he had executed to them a bill of sale or mortgage on certain of his cattle, which were also embraced in bill of sale attached hereto, and that said bill of sale to Hunter, Evans & Co. was in the nature of a mortgage to secure such balance as might be due from him to them in settlement of the season's business between them; said Oneal further said that Hunter, Evans & Co. had not given him a
410 proper accounting, and that he did not owe them as much as they claimed to be due to them; said Oneal further said that the bill of sale he had given to Hunter, Evans & Co. was defective and in his opinion could not be enforced, and that he considered that the bill of sale hereto attached to secure his note for debt to the bank was the first lien on all his cattle. Afterwards, some time in February or March, 1880, Wm. Hunter, representing Hunter, Evans & Co., and John Oneal requested the bank to meet with them and determine on some method for the settlement of our conflicting claims, the officers of the bank, Mr. Nichols, Mr. Britton, and myself, being desirous of having our claim paid and to avoid litigation, determined to join in such meeting and appointed Mr. Britton, the vice-president, to attend such meeting to represent the bank. I was not personally present at said meeting, but understood that it took place March 20th, 1880, and I read and examined the contracts or agreements therein entered into. In pursuance of the provisions of said contract, wherein it was agreed that a mutual agent should be appointed, the bank agreed with Hunter, Evans & Co. in the appointment of Gen'l Henry E. McCullough as such agent, and on the 14th day of May Wm. Hunter came into the bank and introduced to
411 me Gen'l McCulloch, saying he was the gentleman agreed on as agent. I talked with Gen'l McCulloch and the nature of his duties under the contract, a copy of which was furnished him, and paid to him the sum of one hundred dollars for account of his salary and expenses as agent for the bank, and Hunter, Evans & Co. mutually, taking from him the receipt hereto attached, signed by him in my presence, marked by — with my initials, "S. W. L.," for the purpose of identification. Gen'l McCulloch left me with the understanding that he would be at Will's Point, Texas, ready to assume his duties when the cattle were gathered. On or about the 20th day of May I received notice from Oneal & Dawson that the cattle were gathered and ready, and at my request Mr. Robert McCart, as attorney of the bank, went to Will's Point to attend to the interest of the bank and execution of the contract, taking with him our copies of the contracts and the note of John Oneal, hereto attached. Mr. McCart returned me the said note, with the indorsement thereon in his handwriting as follows: "Received on this

note this 22 day of May, 1880, nine thousand seven hundred and fifteen *dollars* and $\frac{78}{100}$ dollars, assumed by John Dawson." Said note, by reason of said indorsements, shows a balance due said bank on said day of six hundred and thirty & $\frac{61}{100}$ dollars, principal and interest, up to said 22 day of May, 1880, which said balance still remains wholly unpaid. Mr. McCart, on his return, told me that the business had been fully concluded according to the contract of March 20th, 1880, and that Gen'l McCulloch and John Dawson had gone off with the cattle. I afterwards received as cashier of the bank the letters hereto attached, which are signed with the genuine signature of Henry E. McCulloch, marked, respectively, No. 1, No. 2, No. 3, No. 4, No. 5, No. 6, and also with my initials, "S. W. L.," for identification. I received from McCulloch the draft referred to in his letter No. 1 for $1,750.50, which was duly forwarded for collection and paid. I also received a draft for $939.88, mentioned in his letter No. 2, which I forwarded for acceptance, but acceptance of which was declined by Hunter, Evans & Co., and which said draft I now attach hereto and mark with my initials for purpose of identification. To my surprise a few days afterwards I learned that the cattle in charge of McCulloch had been sequestered and were in the hands of the
413 sheriff of Montague county, Texas, near Red River station, in said county and State.

Answer of Britton. After having taken the note of Jno. Oneal, secured by a bill of sale, it appeared that Hunter, Evans & Co. claimed a prior lien on some of the cattle, and at the request of Wm. Hunter, agent of Hunter, Evans & Co., we agreed to meet Jno. Oneal & Hunter, Evans & Co., or their representatives, in Ft. Worth with a view to settle the claim without litigation and allow the said Oneal to sell the cattle. On the 20th day of March, 1880, a meeting of the parties was held in Ft. Worth, at which meeting there were present Wm. Hunter & Judge A. T. Watts, representing Hunter, Evans & Co., Jno. Oneal and his attorney, J. C. Kirby, Robert McCart, attorney for the City Nat'l Bank, and myself. Then and there the said Jno. Oneal made the statement that he was satisfied he had sufficient cattle on the range to pay his debts, and that he wanted to gather them and sell them to the highest and best bidder and apply the proceeds to the payment of his debts; that he did not owe Hunter, Evans & Co. as much as they claimed, and that he would not settle with them on any such basis; that the bill of sale held by Hunter, Evans & Co. was in the nature of a mortgage, in-
414 tended to cover any indebtedness that he might owe them at the close of the business season of 1879, and that they would have to have a settlement. He further said that he had had a bid from both Hunter, Evans & Co. and Jno. Dawson for his cattle, but that Jno. Dawson's bid was the highest and best bid, and that he wanted to sell his cattle to him. I considered Hunter, Evans & Co. the best bidder and endeavored to get their agent, Wm. Hunter, to increase their bid to equal Dawson's bid and take the cattle, but he insisted that Dawson had bid more than the cattle were worth, and that he might take the cattle if some arrangement could be made

which would insure the payment for the cattle by Dawson, as per agreement under his bid for the cattle. In pursuance of this statement and John Dawson'- bid, the two contracts which I hereto attach, marked "A. M. B." & "B. M. A.," were entered into and signed by the parties whose names appear thereto. The contract marked "A. M. B." was drawn up by Robert McCart, and the contract "B. M. A." was drawn up by J. C. Kearby. In pursuance of these two contracts and on the recommendation of Hunter, Evans & Co., Gen'l Henry E. McCulloch was appointed the agent of Hunter, Evans & Co. and the City National Bank to accompany John Dawson,
415 receive the proceeds of the cattle, and distribute them to Hunter, Evans & Co. and the City National Bank.

Answer of Nichols. On the 10th December, at the time of the execution of said note and bill of sale, Oneal told me that Hunter, Evans & Co. had treated him badly in not paying the draft of Nov. 15th, 1879; that early in 1879 he had made arrangements with Hunter, Evans & Co. for the season's business, they agreeing to pay his drafts and he giving them a bill of sale to certain cattle, which was in the nature of a mortgage, to secure the payment by him to them of any balance that might be due from him to them at the close of the season's business; that they now claimed a large balance due to them from him, but that he did not owe them any such sum, as would be proved by a proper accounting. He also told me that owing to some defect the bill of sale he had given Hunter, Evans & Co. could not be enforced, and that the bill of sale given me was, in his opinion, the only one that could be enforced. Some months afterwards the proposition was made by Hunter, Evans & Co. to the bank to meet together and arrange some way a settlement with Oneal. Mr. Britton, Mr. Lomax, and myself agreed to do so, and Mr. Britton
416 represented the bank at such meeting, which was held March 20th, 1880. I was not personally present at such meeting, but I saw and read the agreements or contracts entered into thereat. Pursuant to such agreements, the bank agreed upon the appointment of Gen'l Henry E. McCulloch as agent of the bank and Hunter, Evans & Co. jointly. I was introduced to Gen'l McCulloch on the 14th day of May, 1880, by Wm. Hunter, who brought him into the bank. Mr. Lomax, the cashier of the bank, had an interview with McCulloch, and after it paid McCulloch the money mentioned in the receipt of McCulloch attached to Mr. Lomax' deposition in my presence. When we heard of the cattle being ready Mr. Lomax, after consultation with me, appointed Mr. Robert McCart as the attorney of the bank to go to Will's Point and represent the bank there. I remember being shown the letters which are attached to Lomax' deposition as written by McCulloch, and remember reading them. I was told by McCart on his return from Will's Point that the contracts made March 20th, 1880, had been carried out and that Dawson and McCulloch had started with the cattle, as contemplated in the contract. I was much surprised shortly afterwards to hear of the cattle being sequestered in Montague county.

417 Int'y 6th. At the date of any transaction referred to by you between defendant, John Oneal, and the City National

Bank of Fort Worth did the officers or agents of said bank have knowledge, and, if so, what knowledge, of the mutual dealings and relations between plaintiff and said John Oneal previous thereto; and, if so, what?

Answer of McCart. I cannot answer of my own knowledge.

Answer of Lomax. On the 15th day of November, 1879—the day on which Oneal drew and negotiated with the bank the last draft before referred to, being the one dishonored by Hunter, Evans & Co., and on which Oneal's indebtedness in this case to the bank was based—I and the other officers of the bank were well aware of the fact that the said Oneal and Hunter, Evans & Co. had for a considerable time previous thereto had mutual dealings with each other, Oneal being a buyer and shipper of cattle in Texas and Hunter, Evans & Co. being live stock commission merchants in East St. Louis, Illinois, and Oneal during the season of 1879 confining the shipments entirely to Hunter, Evans & Co. I and the other officers of the bank also knew that during the season of 1879 Oneal had habitually drawn on Hunter, Evans & Co. for large sums of
418 money, negotiating such drafts through our bank, and that such drafts had all been duly honored by Hunter, Evans & Co., excepting the draft last drawn.

Answer of Britton. I, together with the other officers of the bank, knew that the said Oneal and plaintiffs had for a long time been dealing with each other in cattle, Oneal shipping cattle to plaintiffs and drawing drafts on them.

Answer of Nichols. On the 15th day of November, 1879—this day on which Oneal drew the draft that was dishonored by Hunter, Evans & Co., and on which draft Oneal- debt to the bank was principally based—I knew that Oneal and Hunter, Evans & Co. had mutual dealings. Such dealings had commenced in March, 1879, and continued up to November 15th, 1879, Oneal buying cattle and shipping them to Hunter, Evans & Co.; and during that time Oneal drew for large sums of money on Hunter, Evans & Co., negotiating his draft- at our bank, and all of his drafts being paid except the last before referred to.

Int'y 7th. Do you know or have you heard, and, if so, from whom, of any understanding, promise, or agreement between the plaintiffs and any agent of such bank in regard to the furnishing of
419 money by said bank to said Oneal, and about the payment of the same, or as to who would pay or be responsible for the payment of the same, and when and how said things should be done? And, if you do, state all you know, giving the date of the transactions and stating what, if any, dealings were had under such agreements or understanding; to what extent, if any, they were relied on or performed, and whether there was any default made, and, if so, what, who by, and when.

Answer of McCart. I know nothing, of my own knowledge, of the matter referred to.

Answer of Lomax. Some time about the middle of March, 1879, I remember Wm. Hunter, who was then acting as agent for Hunter, Evans & Co. at Fort Worth, and John Oneal came into the bank

and had an interview with A. M. Britton, then vice-president of the bank, and after they had gone out Britton told me, as cashier, for my guidance in performing my duties, that he had arranged with Oneal and Hunter for the furnishing of funds by the bank to Oneal to be used in the purchase of cattle to be shipped to Hunter, Evans & Co., and that Hunter had said that Hunter, Evans & Co. would honor Oneal's drafts on them, and that when the advances to be made Oneal became large or inconvenient to the bank that such advances should be covered by Oneal's draft on Hunter,
420 Evans & Co.; or if Oneal was not at hand to give the drafts Wm. Hunter would do so. Acting upon the representation so made, and relying on the guarantee of Hunter, Evans & Co., so made, the bank extended the line of credit before referred to — Oneal. There was no default made until the refusal to honor the draft drawn by Oneal on the 15th of November, 1879.

Answer of Britton. I have fully answered this interrogatory in my answer to interrogatory 4th.

Answer of Nichols. Some time in the middle of March, 1879, Wm. Hunter, agent for Hunter, Evans & Co., told me, in a conversation relating to our doing business with O'Neal, that Hunter, Evans & Co. would pay Oneal's drafts during the season; that we need have no hesitancy in advancing Oneal money, as at any time we wanted it such advances would be covered by his or Oneal's drafts on Hunter, Evans & Co. Similar representations were made to me frequently by said Wm. Hunter during the summer and fall of 1879, and on the 15th day of November, 1879, said Wm. Hunter assured me that the draft on that day made by Oneal would be paid by Hunter, Evans & Co., being the same draft which was afterwards returned dishonored.

421 Int'y 8th. State the names and offices of the managing officers and agents of the City National Bank of Fort Worth in the years 1879 & 1880 and while the transactions between said bank and Oneal and plaintiffs were being conducted.

Answer of McCart. John Nichols, president; A. M. Britton, vice-president; S. W. Lomax, cashier.

Answer of Lomax. John Nichols, president; A. M. Britton, vice-president, in charge of discounts and credits, and S. W. Lomax, cashier, performing the usual and legal duties pertaining to such office.

Answer of Britton. John Nichols, president; A. M. Britton, vice-president; S. W. Lomax, cashier.

Answer of Nichols. I was president, A. M. Britton vice-president, and S. W. Lomax, cashier, of the bank.

Int'y 9th. If at the dates of the different transactions between said parties some of the officers or agents of said bank were present and participated and other or others were not present and did not participate you will please state how that was in each instance; and if in any of said transactions there was some fact or facts relating thereto known to some one of said officers or agents
422 and not known to another state how and what it was.

Answer of McCart. At the time of the transactions before

referred to at my office on the 20th March, 1880, Mr. Britton was present, representing the bank.

Answer of Lomax. At the time arrangements were made, in March, 1879, for business with Oneal and Hunter, Evans & Co. Mr. A. M. Britton, vice-president, alone made such arrangements. After the arrangement was made the various transactions were conducted sometimes by me, sometimes by Mr. Nichols, and sometimes by Britton, whichever was most convenient. Mr. Nichols and I only were present on the 10th day of December, 1879, Mr. Britton being absent from town. Mr. Britton only attended the meeting held March 20th, 1880.

Answer of Britton. I myself was present with Oneal and Wm. Hunter, agent of Hunter, Evans & Co., as the officer of the bank in charge of the discounts and credits of the bank. Neither Mr. Nichols or Mr. Lomax were present at the time of this conference. I also was alone present at the meeting on the 20th March, 1880. I also was alone present during the conversation with Wm. Hunter when he assured me that the draft of Oneal on Hunter,
423 Evans & Co. (on which payment was refused) would be honored without my taking the bill of lading. I did not speak of this to the other officers of the bank, because I was on the eve of leaving the city, and did leave and was absent some six weeks. They, not knowing of the conversation I had overheard, did not know of any reason why Oneal should be asked to accompany his draft with a bill of lading, as that would have been an unusual request to have made from him.

Answer of Nichols. At the time arrangements were first made with Oneal, in March, 1879, Mr. Britton was present. After that the various transactions had under that arrangement were made sometimes with me, sometimes with Lomax, & sometimes with Britton. On the 10th December — and Lomax and I only were present of the bank officers, Britton being out of town. Britton was the only one of the bank officers present at the meeting March 20th, 1880.

Int'y 10th. Please state what means and facilities plaintiffs had and what the managing officers and agents of said bank had previous to March and May, 1880, to know the financial standing of and the kind, character, and value of the property, particularly the
424 cattle belonging to defendant, John Oneal, and if there had been dealings between said Oneal and either of said parties previous to that date state which and of what character and for how long continued. What business were plaintiffs engaged in and for how long had they been in such?

Answer of McCart. I know nothing of my own knowledge of the matters referred to herein.

Answer of Lomax. The officers of the bank gained their knowledge from John Oneal and Wm. Hunter. Hunter claimed to know Oneal well. Oneal had been doing business as a cattle-shipper with Hunter, Evans & Co., cattle commission merchants, for some years prior to 1879.

Answer of Britton. The information gained by the officers of the bank were gained from conversations with John Oneal and Wm.

Hunter. Oneal had been doing business withHunter, Evans & Co. for several years, Oneal being a buyer & shipper and Hunter, Evans & Co. in the cattle commission business.

Answer of Nichols. We gained our information from Oneal himself and from Wm. Hunter. Oneal had done business with Hunter, Evans & Co. as a shipper prior to 1879. Hunter, Evans & Co. have been in the cattle commission business some years prior to 1879.

425 Int'y 11th. You will state whether, on or about the 20th of March, 1880, at Fort Worth or elsewhere, you or any officer of said bank conspired or concerted with either John Dawson or John Oneal or with both of them to mislead or in any manner deceive said Hunter, Evans & Co. or either of them or any attorney or agent of theirs in regard to any settlement or proposed settlement or arrangement between them and said Oneal, or in regard to the value or description of the property of said Oneal, or as to the payment or non-payment of any indebtedness or asserted indebtedness from said Oneal to plaintiffs, or did you then and there and with a view of inducing plaintiffs to enter into any agreements about said date or did any such officer or agent of said bank make any threat or use any means to intimidate plaintiffs, their attorneys or agents, or any one of them, to influence them, to execute any agreement or agreements? And, if so, state fully what they were; or if you state *they* were none such, then state why and how you know there were not, and state in detail so far as you are able the facts, circumstances, conversations, interviews, and consultations at and preceding the

426 execution of said agreements, where it was done at, who was present, and who participated, &c.

Answer of McCart. I did not conspire with John Dawson or John Oneal or with any of the officers of said bank to mislead or in any manner deceive Hunter, Evans & Co., plaintiffs, their agents or attorneys, in regard to any arrangement or settlement between said plaintiffs and said defendant Oneal, or in regard to the value and description of the property of said Oneal, or as to the non-payment of any indebtedness from said Oneal to said plaintiffs. I did not make any threats or use any means of any kind to intimidate pl'ffs or their attorneys or agents, nor did I make threats of any kind in order to induce them to execute said agreements. I know that the agreements executed by plaintiffs and the bank and said Oneal were freely and voluntarily executed. Said agreements were fully and thoroughly discussed, read over, and examined in my office in the presence of said Oneal, J. C. Kearby, his attorney, Wm. Hunter, agent for Hunter, Evans & Co., & Judge Watts, their attorney, and A. M. Britton, vice-president of the City National Bank, before the same were executed and delivered. The terms of these agreements were arrived at and agreed on after a full and exhaustive discussion of all the facts, and were then reduced to

427 writing and signed as aforesaid. If one party enjoyed and possessed an advantage over the other in knowledge as to the property in controversy and as to Oneal's circumstances and condi-

tion it was the plaintiffs, for they had known him and his affairs better and longer than the other party.

Answer of Lomax. I never at any time conspired with Dawson or Oneal or any other person for the purpose named in this interrogatory, nor did I ever use any threats as named in this interrogatory, nor did any other office- of the bank, so far as I know or heard, ever conspire with Dawson, Oneal, or any other person as named in this interrogatory, or threaten as named in this interrogatory.

Answer of Britton. I did not, and know that neither of the other officers of the said bank did conspire with either Dawson or Oneal at said times or at any other time for the purposes mentioned in said interrogatory, or for any other purpose, nor did I, or any other officer of the bank, use any threats of the character mentioned in said interrogatory, or any kind of threat for the purposes mentioned in said interrogatory, or for any purpose. I know the other officers did not, for I alone conducted these transactions, and they were not present, as I have before stated. I did endeavor to induce
428 Hunter, Evans & Co. to purchase the cattle from Oneal instead of Dawson, for the reason that I, at that time, believed the bank would get its money sooner from them than under the contract with Dawson, and supposed that it was fully understood that we were to get our *pro rata* of the proceeds, as agreed upon in said contract.

Answer of Nichols. I never conspired with Dawson or Oneal or any other person for the purpose or object as named in this interrogatory, nor did I ever use any threats, nor did any of the other officers of the bank, so far as I know or have heard, either threaten or conspire with any one for the purpose or objects named in this interrogatory. I was not present at the meeting March 20th, 1880.

Int'y 12th. Were you present at Will's Point on 22d May, 1880? State who represented said bank there in the transactions between said Oneal and Dawson; who so represented plaintiffs. State what you know about the delivery, if there was such, at that time and place, of any cattle to defendant, John Dawson, and, if any, how many and who they were delivered by. State what stocks or brands they belonged to, whether any of them were in what was known in the transactions referred to as the O N brand, and whether
429 any, and what, proportionate part were in other brands; and if so, and you can do so, state what brands. State the circumstances of such delivery; how far from Will's Point; about what hour of the day; whether they were driven immediately by Dawson, and was it towards or from and how near Will's Point. Do you know positively or by circumstances occurring at the time and place whether plaintiffs, their agent or attorney, had knowledge of such delivery? And, if so, state what you know in that respect. Did plaintiffs, their attorney or agent, at said time and place, by declaration, act, or otherwise, either consent or object to such delivery; and, if so, which was it? And state what such declaration or act was, or if consent or opposition was then and there otherwise evidenced; state how that was.

Answer of McCart. I was present at Will's Point on the 22 day of May, 1880, as the attorney of and representing the bank on the occasion referred to. Judge A. T. Watts & Lewis were also there as agents and representatives of the plaintiffs. By agreement of all parties—that is, Oneal, Hunter, Evans & Co., and the bank—it was and had been determined that whenever Oneal had gathered the cattle and was ready to deliver them to Dawson, upon notice to plaintiffs and the bank, said last-named parties were to send
430 some one to Will's Point to represent their respective interests. When I arrived at Will's Point, on the 22 day of May, 1880, I found Lewis Evans there, and found that he had been there for 10 days or two weeks. Judge Watts arrived there the same day I did. I know that John Oneal transferred and delivered at Will's Point, in the presence of Lewis Evans and Judge Watts and Gen'l H. E. McCulloch and myself, (1,741) seventeen hundred and forty-one head of cattle to John Dawson, price of the same, according to previous contract, amounting to nineteen thousand and thirty-three dollars ($19,033.00). The number of cattle, their ages, and price per head, are as follows:

396 yearlings, at $7.00 per head	$2,772 00
424 2-y'r-olds, " 9.50 " "	4,028 00
220 3 " " " 13.00 " "	2,860 00
182 4 " " " 18.00 " "	3,276 00
246 cows, " 10.50 " "	2,583 00
263 " & calves, at 13.00 per head	3,419 00
10 bulls, at 9.50 per head	95 00
Total	$19,033 00

The delivery of these cattle was made and completed and all the papers signed late in the afternoon of the 22nd May, 1880. I know that said cattle were delivered by John Oneal to John Dawson, with the full knowledge, approbation, and consent of Lewis Evans & Judge Watts, agents and representatives of plaintiffs. After
431 the cattle had been driven through Will's Point by John Dawson and McCulloch, the mutual agent of the bank, and Hunter, Evans & Co., the cattle were left a few miles from Will's Point, and John Dawson, Gen'l McCulloch, Lewis Evans, Judge Watts, J. C. Kearby, and myself all met in a room at the hotel in Will's Point, and thereupon it was agreed upon as to the number of cattle, viz., 1,741 head, and the price of said cattle that had been delivered by Oneal to Dawson, and thereupon Judge Watts wrote a note for the sum of $19,033.00, payable to Hunter, Evans & Co. and the City National Bank of Fort Worth. Said note was signed by John Dawson and was delivered to Gen'l McCulloch, who had before been agreed on as the mutual agent of plaintiffs and the bank by the order of Judge Watts and myself. After said note was delivered to McCulloch as aforesaid, and in the presence of the parties I have before named and at the same place, John Dawson paid to McCulloch, as mutual agent of plaintiffs and the bank, the sum of $3,419.00, which amount was then and there credited on the back

of Dawson's said note. I myself asked Judge Watts to write the credit on the back of said note for said $3,419.00, which he did. It was then and there, in the presence of John Oneal, Lewis Evans,
Judge Watts, myself, and others, agreed by John Oneal that
432 he was owing the bank $10,339.85, as evidenced by a note
executed December 10th, 1879. Said John Oneal at said time claimed that all he was owing Hunter, Evans & Co. was $9,915.74. Judge Watts, a banker, whose name I don't now remember, and myself figured on the *pro rata* which would be coming to plaintiffs and to said bank, respectively, out of Dawson's note according to the said amount not disputed by Oneal, and the result of our calculation was that Hunter, Evans & Co. was entitled to the sum of $9,317.22 out of said note, and that the bank was entitled to the remainder, viz., $9,715.78, making the said sum of $19,033.00 the amount of the purchase-money of the cattle and the amount of the note. At the same time Gen. McCulloch asked Judge Watts, representing Hunter, Evans & Co., and myself, representing the bank, what was the *pro rata* share on the thousand dollars for each party, stating that as money was paid over to him he would have to remit to plaintiffs and the bank their respective shares as fast as he should receive it. We both told him that on ever- $1,000 he would have to send plaintiffs $482.52, and to the bank $510.48. When the cattle had been transferred and delivered as aforesaid and Dawson had signed said note for
$19,033.00 I, in the presence of all of said parties, then and there
433 made this endorsement on the note of John Oneal to the bank,
viz: "Received on this note this 22d day of May, 1880, nine thousand seven hundred and fifteen dollars & $\frac{78}{100}$ dollars assumed by John Dawson," this being the amount, as before agreed on, that was coming to the bank out of said note signed by Dawson and given to plaintiffs and said bank. When we—that is, Judge Watts, Lewis Evans, and myself—found out that the cattle gathered and delivered by Oneal to Dawson amounted to only $19,033.00, which was not enough to pay the bank and plaintiffs, I asked Judge Watts what we should do, for the cattle delivered were not sufficient to pay us both. I had the original written contract with me—the one executed 20th March, 1880, by John Oneal, plaintiffs, and the bank—and called his attention to that part of the agreement wherein Oneal obligated himself that if he, Oneal, failed to deliver cattle enough to satisfy both debts then he, Oneal, was to secure the plaintiffs and the bank by giving deeds of trust or such other liens upon property as should be sufficient to pay such deficiency. I said that the cattle delivered having paid all the bank's debt except about $630.00, that I, for the
bank, was willing to let Dawson take the cattle, and I would
434 run the risk of Oneal securing or paying the bank that
amount. I said, Now is the time to stop the delivery and driving of the cattle if you are opposed to the delivery of them to Dawson without Oneal securing us according to contract. Watts made no objection to full and complete delivery of the cattle to Dawson and to their being driven off by him. On the *of the* delivery of the cattle and before they had been delivered there was a dispute and wrangle between Oneal, Lewis Evans, and Judge Watts as to the

true amount of the indebtedness of Oneal to plaintiffs, Watts and Evans claiming that Oneal owed plaintiffs from $16,000 to $18,000, and Oneal claimed that he only owed them the amount before stated, $9,915.74. Although there was this dispute said cattle were delivered to said Dawson and the *pro rata* of the parties was agreed upon, with the full knowledge and consent of Watts & Evans. I know that after Dawson had signed his note as aforesaid, and after we had agreed on the *pro rata* of plaintiffs and the bank, he, Dawson, asked if everything was now all right and if he could go on with his cattle, and it was said to him by Judge Watts and my-
435 self that the cattle were his and he could drive them to market, it being fully understood that he was going to drive them through Northwest Texas and the Indian nation to Kansas. The cattle delivered to Dawson were in the "O N" and other brands.

Answer of Lomax to the 12th interrogatory. I was not present at Will's Point May 22nd, 1880. Mr. Robert McCart, at my request, went there at that time to represent the bank, as hereinbefore stated.

Answer of Britton. I was not present.

Answer of Nichols. I did not attend at Will's Point in May, 1880. Mr. Rob't McCart was there representing the bank as its attorney, as stated in my answer to the 5th interrogatory. Pursuant to the agreement of March 20th, 1880, both the bank and Hunter, Evans & Co. were to each have a representative present at time of delivery of cattle, and when the bank had notice that the cattle were ready for delivery we at once directed and authorized Mr. McCart to go to Will's Point and represent the bank at such time.

Int'y 13th. State whether defendant, John Dawson, paid for said stock of cattle, if any was delivered to him, and what and how
436 he paid it. If by his note, state, if you know, by whom it was written; state to whom it was made payable; state when, by whom, and to whom it was delivered, and why it was made payable and was delivered as it was, and state if said bank, or if plaintiffs, on account of said note or of any interest in it, gave said defendant Oneal any credit, receipt, or satisfaction of any debt. And, if so, what debt and for what amount was such credit or receipt given, and how was such amount arrived at? Was any other note, contract, agreement, mortgage, or security surrendered to said Oneal on account of said transaction, or in any way surrendered or cancelled? And, if so, state what it was and the amount, and state all that was done.

Answer of McCart. I think I have fully answered this in my answer to 12th interrogatory.

Answer of Lomax. I only know that Mr. McCart returned the Oneal note to me with a credit thereon of $9,715.78, being our share of the purchase-money from Dawson's note for the cattle in controversy.

Answer of Britton. Not being present at the time of the delivery of said cattle, I cannot answer said interrogatory.

437 Answer of Nichols. Not having been present at the time of the delivery of the cattle, I cannot answer except to say that

Mr. McCart on his return from Will's Point returned the Oneal note to the bank with a credit thereon endorsed by him of $9,715.78, being our share of the Dawson note made at Will's Point for the price of the cattle bought by Dawson from Oneal, being the cattle in controversy.

Int'y 14th. When said stock of cattle was delivered to said Dawson, was it or not known to the agents and attorneys of plaintiffs and said bank that it was so delivered as a sale to him by said Oneal; was it then known or not? Was it or had it been openly discussed? What disposition and at what place said Dawson was going to make of said stock of cattle; and, if so, what was so known or understood? In what county had said stock of cattle been using before it was sold and delivered to said Dawson? In what county was it delivered to him? Where and by what route—into or through what States, Territories, or counties, if any, was it understood by plaintiffs and said bank that said Dawson would have said cattle driven or transported? If you state there was any such un-
438 derstanding or knowledge by them and if there was you will state how you know there was such.

Answer of McCart. When said cattle were delivered to Dawson it was the understanding of all parties plaintiffs, Oneal, the bank, and Dawson, that the sale to him was absolute, subject only to the provision that he should pay over the proceeds of the sale of the same to Gen. McCulloch as fast as he should sell them. It was likewise fully known and understood and had been discussed among all parties that Dawson had purchased these cattle to drive to market either in Kansas or Indian Territory; that they ranged in Van Zandt county, Texas, and that they were to be driven through Montague county on their road to Kansas and the Territory. Before he started Dawson told Evans and myself that he was anxious to get away as soon as possible, because he was under contract to deliver a part of these cattle to one Allen in the Indian Territory, and that he had no time to lose in order to meet his said contract.

Answer of Lomax. The cattle used and ranged in Van Zandt county, Texas. It was well known and understood among all
439 the parties that Dawson had purchased these cattle from Oneal for the purpose of driving them along the usual trail through Montague county, across Red River, through the Indian Territory, to a market either in the Territory or Kansas, where he proposed to sell the same. It was also fully understood that he had full power and authority to select the route along which said cattle were to be driven, McCulloch accompanying him, as the mutual agent of the bank and Hunter, Evans & Co., for the purpose of receiving the purchase-money, as agreed on between Dawson & Oneal and under the contracts of March 20th, 1880, and distributing it between the bank and Hunter, Evans & Co., as provided for in such contract.

Answer of Britton. It was fully understood between all the parties, plaintiffs and defendants, at the time the contracts I have mentioned were signed that Dawson would drive the cattle to Kansas over the usual cattle trail, and that he would offer them for sale en route and

sell them before reaching Kansas, provided he got a satisfactory offer for them. These cattle ranged in Van Zandt county, and it was fully known and understood by plaintiffs that said cattle were
440 to be received by Dawson near Will's Point, in said county, and pass through Montague county on their road to Kansas.

Answer of Nichols. I understood the cattle ranged in Van Zandt county, Texas. It was contemplated and provided in the agreement March 20th, 1880, that Dawson should have charge of the Oneal cattle, and he did so purchase them at Will's Point. I understood the sale to Dawson to be absolute, the proceeds to be paid to McCulloch, the mutual agent for the bank and Hunter, Evans & Co., until our respective portions of his note had been paid. I knew that the route proposed to be taken by Dawson in driving the cattle was from Will's Point through Montague county, across Red River, through the Territory to market.

Int'y 15th. State whether in pursuance of any previous agreement between plaintiffs and said bank an agent was appointed in relation to anything to be done with said cattle or their proceeds after their sale and delivery to defendant Dawson; and, if so, who was so appointed, on the nomination of which party was such agent selected, when was he appointed, and when and what place did he begin the work of his agency? Explain what it was he was appointed to do, who instructed him in regard to his duties,
441 or how was he made acquainted with them. Has he given any paper or contract; and, if so, what? Did he perform any act under or in pursuance of his appointment? And, if more than one, then mention his substantial acts so far as you know and their result. Did he go anywhere in pursuance of his agency? Did he receive anything in pursuance of such agency; and, if so, when, what, and what disposition did he make of it? Did said bank or did plaintiffs receive anything from such agent in pursuance of or about his said agency? And, if so, state when, what it was, what disposition was made of it, and all circumstances attending each such transaction; and if you have any letters or reports from such agent in relation to the subject of his agency please attach them and make them a part of your answer hereto.

Answer of McCart. I know that Gen'l H. E. McCulloch was selected by plaintiffs and the bank as their mutual agent for the purpose of accompanying Dawson and said cattle on the drive from Will's Point, and for the purpose of receiving from Dawson the proceeds of said cattle as fast as he could sell them, and then prorating and transmitting said proceeds to plaintiffs and the bank respectively. I know that he left Will's Point with Dawson.

442 Answer of Lomax. Gen'l Henry E. McCulloch was appointed as such agent on the nomination and solicitation of Hunter, Evans & Co. He was appointed, instructed, and paid and performed such duties under his contract as I have fully stated in my answer to the 5th interrogatory. I have fully answered this interrogatory in my answer to the 5th interrogatory.

Answer of Britton. At the suggestion of Hunter, Evans & Co. Gen'l H. E. McCulloch was selected as the mutual agent of Hunter,

Evans & Co. and the bank to accompany said cattle until sold and receive the proceeds thereof as provided for in said contract. I was not present at the time he received his instructions and took charge of said cattle. I was absent from the city during the time Gen'l McCulloch had charge of the cattle. The correspondence of Gen'l McCulloch with the bank is attached to the deposition of Mr. Lomax, cashier.

Answer of Nichols. The agent appointed as provided for in the agreements March 20th, 1880, was Gen'l H. E. McCulloch, and he was appointed on the nomination of Hunter, Evans & Co. He was paid by the bank $100, as stated in my answer to the 5th in-
443 terrogatory. He performed his duties up to the time of the sequestration of the cattle, as was evidenced by his letters to the bank, which are attached to Mr. Lomax' deposition.

Int'y 16th. Was said agent to receive any compensation; and, if so, by whom was it to be paid and for what was he to be compensated? Has said bank paid said agent anything on account of his services as such agent; and, if so, what amount, and when? If you have his receipt attach it to your answer.

Answer of McCart. Of my own knowledge I know nothing concerning these matters.

Answer of Lomax. According to the best of my recollection Gen'l McCulloch was to be paid $150.00 per month, which expense was to be equally borne by Hunter, Evans & Co. and the bank. As I have before stated, the bank paid him $100.00 on account of his services as such agent, the receipt for which I have attached hereto, as described in my answer to the 5th interrogatory.

Answer of Britton. He was to be compensated for his services, and said compensation to be equally shared by Hunter, Evans & Co. & the bank.

Answer of Nichols. I think that Gen'l McCulloch was to be paid $150.00 per month, and his expenses were to be equally
444 divided between the bank and Hunter, Evans & Co., he being employed as the mutual agent of both parties.

Int'y 27th. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause or either of them or that may be material to the subject of this your examination or the matter in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer of McCart. I can now think of nothing.

Answer of Lomax. I believe I have fully stated all matters I now recollect.

Answer of Britton. I cannot now remember anything else pertinant to the matter at issue.

Answer of Nichols. I think I have answered as fully as my present recollection goes.

Interrogatories Propounded to John Dawson, a Witness for Defendants.

Int'y 1st. What is your age? Are you acquainted with the parties to this suit? What was your occupation in 1880?

445 Answer. I am 36 years old. I am acquainted with the parties to this suit. My occupation in the year 1880 was dealing in cattle.

Int'y 2nd. If in the early part of the year 1880 you purchased or agreed to purchase any cattle from the defendant, John Oneal, you will state why or for what purpose you first concluded to purchase such cattle, and between whom and when and where negotiations for such purchase was first commenced, and what difficulties, if any, were found to be in the way of your making such purchase, and what steps or means, if any, were taken to prepare the way to such purchase; what parties, if any, had to be or were consulted with, what arrangements or agreements in regard to such purchase were made, if any, and what, if any, influence, did they have on your own action.

Answer. In the early part of the year 1880, February, I think, having learned that the defendant Oneal had a herd of cattle for sale, I went to Van Zandt county, where Oneal lived and where the cattle were being gathered, to negotiate a trade with him for the cattle.

446 Mr. Oneal agreed to sell me the cattle provided the City National Bank and Hunter, Evans & Co. were willing for him to sell, stating to me that they both had liens on said cattle. I then consulted with both of said parties, Hunter, Evans & Co. and the officers of said bank, and they both agreed that Oneal might sell me the cattle if things could be amicably arranged between all parties. Hunter, Evans & Co. referred me to Wm. Hunter and Judge Watts, of Dallas, as their agents in the matter. I will here state that Oneal and I had already, before I went to the other parties, agreed on the price of the cattle. On the 20th March, 1880, all the parties met together at Ft. Worth and the contract of sale was agreed on & signed by myself and Hunter, Evans & Co. by Wm. Hunter, and the City National Bank by A. M. Britton. I here refer to the original contract, which is attached to Mr. A. M. Britton's deposition in this case. I supposed that everything was settled to the satisfaction of all parties on said 20th of March, and made my arrangements to go to Van Zandt county and receive the cattle when they should be ready, which was to be some time in May following.

447 Int'y 3rd. State if between the 20th March, 1880, and the 22nd May, of the same year, you were at any expense or devoted any of your time to the examining or gathering the stock of cattle that was afterwards penned near Will's Point, Van Zandt county, and driven from there by you on the 22d May, 1880, as cattle purchased from defendant Oneal; and, if so, state the items and amount of such expense, and also the value of time and labor of yourself, if any; and if you had any engagements or contracts of your own to which the purchase of said cattle related in any way, state what and where and when they were to be performed, and explain any relation they may have had, if they had any, to the purchase of cattle of said Oneal.

Answer. About the 1st of May, with a view of receiving the said cattle, I hired (12) twelve hands at about an average of $30.00 per month & board. I bought a number of horses, together with wagons, provis-

ions, &c., and went to said Van Zandt county to receive said cattle.
I devoted my own time and attention, from said 1st of May
448 to the 22nd of that month, superintending the *the* gathering
of said cattle and examining them and receiving them. The board of my hands and other expenses incident to the cattle outfit and to that particular business cost me at least ($20.00) twenty dollars per day. I value my time at that period at the price of at least ten dollars per day and my labor at an equal amount, and state that my time and labor from the 1st to the 22nd of May was of the value of $20.00 per day, at least. During the time I was down in Van Zandt county receiving these cattle, some time about the 10th of May, I contracted to deliver one thousand head of cattle to Thomas Allen, at Pawnee, in Ponco agency, Indian Territory. Said cattle were to consist of two-year-old heifers and bulls. Said cattle were to be delivered from the 15th to the 20th day of June, and I intended the heifers and bulls that I should get from Oneal to be put in on said contract with Allen.

Int'y 4th. Were any, and, if any, what, number of cattle were delivered to you on the 22d May, 1880, as cattle purchased by you
from defendant, John Oneal? And, if any, state where such
449 delivery was made; state on what day of the month, on what day of the week, and what hour of the day such delivery was made; state by whom it was made and within whose knowledge and presence it was made; state whether the plaintiffs or either of them or any agent or attorney of plaintiffs, and, if so, the name of such agent or attorney, was present at the time of or immediately after such delivery, or in any manner, and, if so, in what manner, had knowledge of such delivery on the day when it was made, if made at all, and state your means of knowing and all the facts relating to such presence or knowledge, if you state there was such.

Answer. On the 22d day of May, 1880, the gathering of the herd that I had purchased from Oneal was completed, and Oneal on that day made formal delivery of said cattle with bill of sale to me. The delivery was made and completed and all the papers were signed somewhere about 5 o'clock in the afternoon of said day at the town of Will's Point, Van Zandt county, Texas. The delivery was made
to me by John Oneal in person and by Hunter, Evans & Co.
450 through their agent, Lewis Evans, Judge Watts, their attorney, and by the City National Bank through their attorney, Robert McCart. Gen'l H. E. McCulloch, agent for both the plaintiffs and the bank, was also there and acted for them. The cattle were delivered to me with the full knowledge, consent, and approbation of all the above-named parties, who were all present at the time Oneal made and executed the bill of sale to same to me for said cattle and at the time I gave my note to them for the purchase-money, being for the sum of nineteen thousand and thirty-three dollars ($19,033.00). The cattle so delivered to me numbered seventeen hundred and forty-one head (1,741).

Int'y 5th. State what was the fair market value of any stock of cattle purchased by you, as in the preceding interrogatory, and state

whether you paid for the same; and, if so, state when and how you paid for said stock.

Answer. Nineteen thousand and thirty-three dollars, the price agreed on, was, I considered, the fair market value of said cattle. I paid for said cattle so purchased by me from said Oneal by
451 executing and delivering to Gen'l H. E. McCulloch my negotiable promissory note, payable to Hunter, Evans & Co. and to the City National Bank of Ft. Worth, for the said sum of nineteen thousand and thirty-three dollars ($19,033.00). Said note was payable one day after date and bore interest from date. At the time I executed said note I paid to Gen'l McCulloch, as agent for plaintiffs and the bank, the sum of three thousand four hundred and nineteen dollars ($3,419.00), which was credited on the back of the note by Judge Watts, agent for Hunter, Evans & Co. This last-named amount was the proceeds of 263 head of said cattle that I had that day sold with the consent of all parties, and in order to keep things straight we made the note for the full amount of the purchase-money, and immediately put the credit on the back of it. Of this money ($3,419.00) Hunter Evans & Co. took $1,668.50 and the bank took $1,750.50, being the proportion agreed on between them.

Int'y 6th. If, between the date of the delivery of said stock of cattle to you and the date of its seizure some days afterwards,
452 in the county of Montague, by the writ of sequestration issued in this case, you performed any labor in relation thereto or devoted any time and care to said cattle, you will state what such labor, time, and care was and the value of the same; and if during the same period of time you were at any charge, cost, or expense and paid out any money upon or about said stock of cattle, you will state what it was for and the amount and why it was paid, and state whether plaintiffs or any one for them have ever paid or indemnified you for such expense or labor; and if, by reason of the seizure of said stock of cattle by virtue of the writ of sequestration in this case, you were delayed any, state what that was, and if you were put to any expense by such delay or in any other respect damaged thereby, state what that was.

Answer. From the 22nd day of May, 1880, until the 31st day of May, 1880, I was with said cattle and was driving them to the Indian Territory. I was personally present during said drive and superintended the driving of said cattle myself. I consider that my time and labor from said 22nd to 31st of May, the time they
453 were seized, was well worth the sum of $20.00 per day, and state its value at that amount. My expenses on said cattle during that time was at least $20.00 per day, and I actually incurred that expense and more in driving, taking care of, and handling said cattle and paying hands and expenses. The plaintiffs have not in any way indemnified or paid me any amount on account of my said labor, care, loss of time, & expenses. I state my expense and damage by reason of the seizure of said cattle in this case under a writ of sequestration to be as follows: In the first place I had contracted to deliver cattle at the Ponco agency, in the Indian Territory, and

part of these cattle were intended to fill my said contract, and the part which I could have put in on said contract would have netted me a profit of at least $1,500.00. My expenses and loss of time and leaving my cattle where they were levied on and coming to Ft. Worth to get security on my replevy bond was at least $200.00. At the time these cattle were seized by the sheriff of Montague county I was driving them in the same herd with other cattle belonging to me, the
454 whole herd amounting to about 3,000 head, including the cattle levied on. Of this herd 2,050 head were not contracted for, but were being driven to the Indian Territory for general market as beef and stock cattle, and of the 2,050 head 586 were 3-year-old beef steers. When they were seized in Montague county and after I had replevied them I could not separate the cattle not under contract from those under contract, for it was impossible for me to procure hands to drive a second herd, and I was therefore compelled to drive the whole herd to Ponco agency at a very rapid rate and speed, for if I failed to reach Ponco agency by the 20th day of June I would have been liable for a failure of my contract and would have had to pay $2,000 or $3,000.00 as forfeit on my contract. On account of the delay of eight days occasioned by said levy I had to drive my whole herd at a very rapid rate to reach Ponco agency by 20th of June, which made them low — flesh. If they had been let alone I could have got there with the cattle in good order
455 on time by easy drives. I estimate my damage on my beef cattle as follows: 210 head of beeves damaged $6.00 per head, 183 3-year-olds damaged $4.00 per head, and 193 three-year-olds damaged $3.75 per head, and state that I was damaged in that sum.

Int'y 7th. State whether when you purchased and received said stock of cattle it was known to plaintiffs or their agents what disposition you were going to make of said cattle; state whether there was any particular place or places that you proposed then to have said stock taken to, and whether such purpose was or was not openly known, and particularly whether it was known to plaintiffs or any of their agents and of which one; and, if you say it was, state your means of knowing it, and state also whether any objection was made by plaintiffs or their agents to such procedure, or if it was acquiesced in state that, as well as your reason for so saying, and you will also state over what route you would travel in Texas in properly carrying out such purpose. In going to such point of destination would the county of Montague be within or without the proper line of travel?

Answer. When I purchased and received the cattle at
456 Will's Point on the 22 day of May, 1880, it was well known to all the parties there that I intended to drive them to the Indian Nation and that I intended to go through Montague county on my route there, the said Montague county being on the regular and direct route to the point in the Indian Nation, viz., Pawnee, where I proposed to go. The pl'ffs' agent- were present at the time I declared my purpose, and Lewis Evans, agent for the pl'ffs, who had been up that route, gave me a "way bill"—that is, directions as to the places through which I could best drive and the best route and the best stopping place, and before I started told me that he had

travelled over the proposed trail often, and urged me to go through Montague county, as being the most direct and the best route for grass and water, and it was principally in accordance with his suggestions that I took the trail through Montague.

Int'y 8th. Did any agent of pl'ffs accompany you any part of the time while engaged in driving said stock of cattle; and, if so, who was it, and from what point to what point, and for what purpose *what* he appointed, and what did he do? Did he make any objection to your movements or to the route the cattle were being driven? When & where & under what circumstances did such agent cause to act as such?

457 Answer. Gen. H. E. McCulloch, who had been appointed as agent both of pl'ffs and the bank, accompanied me from Will's Point to the place in Montague county where the cattle were seized under the writ of sequestration. He was appointed for the purpose of receiving the purchase-money due from me to pl'ffs and to the bank for said cattle, and for the purpose of dividing the money between said parties, as had been agreed on theretofore. He made no objection whatever to any movement of said cattle or to the route taken by me. When the said cattle were seized by the sheriff of Montague county Gen. McCulloch declared his surprise at such proceeding and then and there ceased to act as such agent.

Int'y 9th. If you have said you gave a note for the purchase-money of said cattle, you will state whether you made any payments on said note; and, if any, how many, when and who to, and what was the amount of each payment, and whether plaintiffs or any one for them have ever refunded or offered to refund to you such payments or any part of the same or have ever returned or offered to return to you your note given for the purchase-money of said cattle.

458 Answer. As I have before stated, I gave my negotiable promissory note to pl'ffs and to the City National Bank for the sum of $19,033.00. As before stated, I paid on said note the sum of $3,419.00 on the 22 May, 1880, the day the note was given. Afterwards, on the 26th day of May, 1880, I paid on said note to Gen. H. E. McCulloch the sum of ($1,842.00) one thousand eight hundred & forty-two dollars, making in all the sum of five thousand two hundred & sixty-one dollars ($5,261.00). The pl'ffs nor any one else have ever offered to refund to me said money or any part thereof, nor have ever returned or offered to return to me my said note given for the purchase-money of said cattle.

Int'y 10th. Were they any of the stock of cattle so delivered to you by said Oneal branded; &, if so, in what brands? & if any of them had on them the brand O N, state how many, if you can, and state what proportion of the whole had on them said O N brand; and if any of them did not have on them the O N brand, state how many did not have said brand. State what proportion of the whole did not have such O N brand, and state what, if any, brand those not having the O N brand had.

459 Answer. The cattle were all branded and marked. They were in various marks and brands—some branded O N, some

branded A, and some branded H & L, and some branded H C. The majority of said cattle were in the O N brand, but I cannot remember the exact proportion at present that were in these different brands.

Int'y 11th. Do you know whether pl'ffs or any of their agents, and, if so, who, at the time you gave your note for the price of said stock of cattle, or near said time, gave Oneal a receipt or credit for any amount of money? And, if so, state about it, including for what amount it was given, and when, and why, and who by; and what did you understand from this transaction, and what influence, if any, did it have on your action.

Answer. At the time I gave my note, as before stated, for the purchase-money of said cattle the pl'ffs' agent, Judge Watts, gave Oneal a receipt for $9,317.22, which he said was to go on Hunter, Evans & Co.'s claim against Oneal as a credit, that being the amount that was coming to Hunter, Evans & Co. out of my note. It was thoroughly understood by all the parties that everything was satisfactorily settled and adjusted, as far as I was concerned,
460 and that fact was announced to me in terms by pl'ffs' agent and by Mr. McCart before I started. I then proceeded to drive the said cattle in the full belief that I had concluded the purchase and that there was nothing for me to do with pl'ffs or the bank but to pay Gen. McCulloch the balance of my note; and if I had for a moment thought that either pl'ffs or the bank had the right to seize the cattle I never would have consented to take them. I know that such was the full understanding of Lewis Evans & Judge Watts at the time I started, for they told me repeatedly that I was all right and that everything was concluded with me; and I acted on their assurances in taking the cattle and going on the trail with them.

Int'y 12th. Did the def't Oneal give you a bill of sale of the stock of cattle purchased of him? If he did, attach the same to your answer, if you can; and if you cannot, then state why you cannot; and if any receipts were given you for payments made on your note for said cattle attach them to your answer, if you can.

Answer. Oneal did at the time (22d May, 1880), and in the presence of pl'ffs executed and delivered to me a bill of sale for
461 said cattle. I have not said bill of sale with me. I think it is attached to my answer as an exhibit. It is on record in the clerk's office of the county court of Van Zandt county. No receipts were given me for payments on my note. The amounts paid were entered as a credit on the note, no receipts being deemed necessary.

Int'y 13th. Do you know or can you set forth any other matter or things which may be of benefit or advantage to the parties at issue in this cause or either of them or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer. At the time the sheriff of Montague county seized the cattle under the writ of sequestration in this case Lewis Evans and J. B. F. Sampsel, agents for pl'ffs, they being the parties who swore

out said writ, were both present, and stated to me that they knew that I would get damages from Hunter, Evans & Co. on account of said seizure, and that I was entitled to damages, and that Hunter, Evans & Co. were responsible to me for my damages, but that it was cheaper to pay me my damages than to let the City National Bank get away with the sum of $9,000.00.

462 *Cross-Interrogatories Propounded to Robert McCart, S. W. Lomax, A. M. Britton, and John Nichols.*

Cross-int'y 1st. Prior to the date of the agreements entered *to* at Fort Worth, referred to in answers to direct interrogatories, what was your understanding of the amount of Oneal's indebtedness to the complainants? In your interviews with said Oneal at the time of and before the making of said agreements did he not admit that he owed the complainants about the sum of sixteen thousand dollars? Did you not see a letter from said Oneal to the complainants, written shortly before the execution of said agreements, in which the said Oneal stated that he owed complainants, according to his (Oneal's) books, about ($16,000) sixteen thousand dollars, or statements to that effect?

Answer of McCart. I know nothing of the matters referred to in this interrogatory. He made no such admissions to me, nor did I ever see such a letter.

Answer of Lomax. As I have before stated, Oneal had stated to me that pl'ffs claimed an indebtedness against him of a large
463 amount, but that he (Oneal) did not owe them anything like the amount claimed. I saw no such letter as that referred to.

Answer of Britton. I never knew how much Oneal owed Hunter, Evans & Co., nor did Oneal ever inform me that he owed them $16,000.00. I do not remember to have seen a letter from Oneal to Hunter, Evans & Co. acknowledging an indebtedness of the kind mentioned in said interrogatory.

Answer of Nichols. Oneal told me on the 10th December, 1879: "Damn them; they have robbed me. I don't owe them near as much as they claim, and will be able to show it when I get my books fixed up." By "them" he referred to Hunter, Evans & Co. Oneal never admitted to me that he owed Hunter, Evans & Co. about $16,000.00. I never saw the letter referred to.

Cross-int'y 2nd. What was the exact amount of Oneal's indebtedness to the bank at the date of the execution of said agreements at Fort Worth? How much of said indebtedness was covered by Dawson's note, given at Will's Point?

Answer of McCart. I do not know the exact amount at the time referred to. I do know that Oneal's note to the bank
464 was credited with $9,715.78 at Will's Point, as before stated by me.

Answer of Lomax. At the time referred to Oneal owed the bank $9,810.11 and interest at 12 per cent. from Dec. 10th, 1879. A credit of $9,715.78 was entered as from the Dawson note.

Answer of Britton. Oneal owed the bank $9,810.11 at the time mentioned, with several hundred dollars interest accrued thereon. The amount of said indebtedness covered by Dawson's note was $9,715.78.

Answer of Nichols. Oneal then owed the bank his note, dated Dec. 10th, 1879, $9,810.11 and interest, at the time referred to. The only credit that I know of on said note was that of $9,715.78, being the amount of our share of the Dawson note.

Cross-int'y 3rd. If you have stated in your answers to direct interrogatories that complainants were responsible in any way for Oneal's indebtedness to the bank, state why this was not mentioned at the meeting at which the agreements were made at Fort Worth. Who represented the bank at said meeting? Who for the bank signed the agreements?

Answer of McCart. A. M. Britton signed the agreement referred to for the bank. Mr. Britton and I represented the bank.

465 Answer of Lomax. I was not present at that meeting. A. M. Britton represented the bank at that meeting.

Answer of Britton. I myself represented the bank with the bank's attorney, Rob't McCart, at the meeting mentioned. The reason that the question of Hunter, Evans & Co.'s guarantee was not mentioned at the meeting was that Mr. Evans, of the firm of Hunter, Evans & Co., had previously stated to me that he had been at Will's Point and had satisfied himself that there was sufficient cattle to pay the claims. Wm. Hunter had also assured me that there was sufficient cattle to pay the claims, so that at that date we thought the cattle would more than pay our claim and the claim of Hunter, Evans & Co.

Answer of Nichols. I was not present at the meeting referred to. A. M. Britton represented the bank at that meeting and signed the agreements.

Cross-int'y 4th. Who represented the complainants at said meeting? Was not Judge A. T. Watts one of their representatives there? Who drew up the agreements there entered into? Did not Judge Watts at first advise complainants or their other representative at said meeting not to enter into said agreements, and was not his

466 reason for so doing that complainants had the first lien on Oneal's cattle branded O N, and that the only advantages of said agreement was to the bank? Did not the representatives of the bank and Oneal and his attorney several times—at least once—retire together for consultation, and was not one of said consultations immediately after Judge Watts had for the complainants declined to enter into said agreements or advise against them, and after such consultation did not Oneal or his attorney state to the representatives of complainants that Oneal had at his home range a large number of cattle not in the O N brand covered by the bank's mortgage, but not by complainants, sufficient to fully pay the bank's debt, and did you not concur in this statement, and upon this statement did not Judge Watts advise the making of said agreements?

Answer of McCart. Judge A. T. Watts and Wm. Hunter represented pl'ffs, and were present at the meeting referred to. I wrote

one of the agreements, Judge Watts assisting and dictating to me, and either Watts or J. C. Kearby, I am not certain which, wrote the other. I have no knowledge that Judge Watts advised pl'ffs not to enter into said agreements. I know that he said that
467 pl'ffs' lien on said cattle was a superior lien to that of the bank. I know equally well that Mr. Britton and myself asserted that the bank's lien was superior and better than pl'ffs. The rights of both the pl'ffs and the bank was discussed and argued at great length by us all, Judge Watts and Wm. Hunter presenting the pl'ffs' rights and I presenting the side of the bank as best I could, and finally we agreed as shown by the written agreements of that date. I do not remember of retiring and consulting with Oneal or his attorney, nor do I remember of A. M. Britton having done so. I don't remember of Judge Watts having declined at any time to enter into said agreement. I know that Oneal said that he had at home other cattle besides the O N brand, and that he had cattle enough to pay pl'ffs' debt and the bank's debt. Oneal did not, to to my knowledge or within my hearing, make the statement that he had at his home range a large number of cattle covered by the bank's mortgage and not by plaintiffs sufficient to pay off the bank debt or any statement of a like character, nor did Judge Watts thereupon advise pl'ffs to consent to said agreements.

Answer of Lomax. I was not present at said meeting.

Answer of Britton. J. C. Kearby, attorney, and John Oneal, represented John Oneal. Judge Watts and Wm. Hunter repre-
468 sented Hunter, Evans & Co. Rob't McCart and myself represented the bank at said meeting. H. Kearby and Rob't McCart did the writing and Judge Watts dictated most of each of the agreements. Judge Watts did not at any time, to my knowledge, advise complainants or their representative not to sign the agreements, but, on the contrary, he advised Wm. Hunter to enter into the agreements for Hunter, Evans & Co. As far as the consultations between the representatives of the bank and Oneal are concerned, I do not remember of any such consultations having occurred. I do, however, remember that Judge Watts, Wm. Hunter, and myself separated from Oneal and Dawson to consult as to who should purchase the cattle—Dawson or Hunter, Evans & Co. At this consultation I insisted that Hunter, Evans & Co. should purchase the cattle They thought the price asked by Oneal as too high, and said they preferred that Dawson should take them. Oneal did not make such statements after the consultation, nor did Judge Watts advise the entering into the agreements upon any such statement of Oneal, to my knowledge.

Answer of Nichols. I was not present at said meeting.

Cross-int'y 5th. Did you not know at the date of the execution of said agreements that Oneal intended to dispute a much
469 larger portion of the complainants' debt than the complainants believed would be? Did you not know or believe from Oneal's statements or the statements of his attorney that Oneal intended at the date of the execution of said agreements to dispute a large amount of complainants' debt, and did you not at said date

understand and believe that Oneal would dispute enough of complainants' debt to put complainants and the bank upon an equal footing or about an equal footing in the Dawson note, and was not this accordingly done?

Answer of McCart. I do know that Oneal said and claimed that he was not owing as much to pl'ffs as they claimed from him. I did not know or believe that Oneal intended to dispute a large amount of pl'ffs' debt, further than he did say, as I have before stated, that he did not owe them all they claimed, which dispute was known to pl'ffs themselves. I did not understand or believe that Oneal would dispute pl'ffs' debt so as to put pl'ffs and the bank on an equal footing. I did not know what amount Oneal was owing plaintiffs.

Answer of Lomax. I knew nothing of Mr. Oneal's intentions at the time spoken of and was not present at the meeting.

470 Answer of Britton. I did not know of any such intentions on the part of Oneal, nor did I have any information to that effect, nor did I have any reason to believe that he would dispute any particular amount; but, as I have before stated, Oneal stated in the meeting, in the presence of all parties, that he did not owe Hunter, Evans & Co. as much as they claimed, and that he would not settle with them on any such basis, and this was stated before the agreements were signed.

Answer of Nichols. I was not advised of nor did I know Oneal's intentions at the time referred to, and was not present at the meeting.

Cross-int'y 6th. Where is the mortgage given by Oneal to secure the bank's debt? If it, or a copy, is in your possession please attach to your answer and identify it. Does it not refer to the prior mortgage or bill of sale to complainants, and is it not given expressly subject to complainants' lien on the O N stock of cattle? Was it not universally conceded by all the parties that Oneal's O N cattle were about or nearly sufficient to secure complainants' debt, and were not the complainants induced to sign the foregoing agreements

471 namely, if not solely, to avoid litigation with Oneal and effect an amicable settlement with him? If not, what was the consideration? Having the prior undisputed lien upon the greater portion of Oneal's cattle, what other than the consideration aforesaid and the representation that there was enough outside the O N brand, induced complainants to enter into said agreements? Had the bank or any of its agents, by letter or otherwise, ever intimated to complainants that it held them responsible for Oneal's debt to it? If so, state to whom, when, and precisely what way the suggestion or intimation was communicated.

Answer of McCart. The mortgage given by Oneal is in the bank's possession. It was not conceded by all the parties that the O N brand was sufficient to pay pl'ffs' debt, for we did not know either the number of cattle in said O N brand or the amount of Oneal's debt to pl'ffs. I do think the agreement was executed by both parties to avoid litigation between themselves, but not particularly with Oneal, for the pl'ffs were able to fight for their rights, and also the bank threatened to do the same. As I have before stated, the pl'ffs' lien

was not undisputed as to its legality or priority; on the contrary, we strenuously asserted our priority. I cannot speak as to
472 pl'ffs' motives in signing said agreements, but surmise that from the fact that their bill of sale had never been legally recorded, and that the defeasance executed at the same time had never been recorded at all, and that they had never taken any possession of said cattle, as required by law to make their lien valid, and that the lien was given to secure a debt not in existence at the time it was made, that they had no great amount of confidence in it and was willing to share with the bank and compromise.

Answer of Lomax. The mortgage or bill of sale referred to is attached to my answer to direct interrogatory herein and speaks for itself. I was not present at the negotiations between the parties, on the 20th of March, 1880, and cannot say as to what were the thoughts and intentions of the parties at the time of the execution of these agreements. I know of no intimation from the bank to Hunter, Evans & Co. that the bank would hold them responsible for the Oneal debt, but had I known of what transpired between John Hunter, the agent of Hunter, Evans & Co., and Mr. Britton, our vice-president, on the day of the giving of the last draft by Oneal on Hunter, Evans & Co., and which they refused to pay, I
473 should have considered Hunter, Evans & Co. liable to the bank for the payment of the draft and damages, and should have commenced proceedings against them and Oneal to that end.

Answer of Britton. The mortgage referred to is attached to the deposition of Mr. Lomax in this case, and will speak for itself. It was not conceded by all parties that Oneal's O N cattle would about pay complainants' debt, for we did not know how many of said cattle there were, nor was the fact conceded that the pl'ffs' lien was prior to that of the bank on the O N cattle; on the contrary, however, before the agreements were entered into Wm. Hunter had, on several occasions before entering into said argeement, intimated to me that the bill of sale in favor of Hunter, Evans & Co. was defective for some reason or another, and, besides, the officers of the bank had been informed by Oneal that the bill of sale to Hunter, Evans & Co. was without consideration, and was defective and invalid for other reasons. Of course, I cannot say positively what induced complainant to enter into said agreement, but, from the fact that their bill of sale had not, prior to the making and record of our bill of sale, been recorded, and complainants had never taken possession of any of said cattle, besides, had been
474 the moving cause of our credit to Oneal, I suppose they thought they would better their position by entering into the agreement, as — would, in addition, be an act of good faith towards the bank. I do not know of the bank ever having told complainants that they held them responsible for Oneal's debt to it. I will state here, however, that had I been in the city of Fort Worth at the time Hunter, Evans & Co. allowed Oneal's draft to go to protest I would have held them responsible for the debt and would not have surrendered Oneal's draft on Hunter, Evans & Co. and taken instead the note of Oneal secured by the bill of sale; but, as I have

before stated, I was absent from the city, and the other officers of the bank, being ignorant of the statements made to me by Wm. Hunter the day the draft was drawn and the other conversations with Wm. Hunter before stated, acted differently.

Answer of Nichols. The mortgage or bill of sale is before me, attached to Mr. Lomax' deposition, and speaks for itself. As before stated, I was not present at the meeting March 20th, 1880. I do not know what were the thoughts or intentions of the parties at the time the agreements were executed. I do not know of any notification from the bank to Hunter, Evans & Co. that the bank
475 would hold them liable for the Oneal debt, but I did tell Wm. Hunter that, relying on his assurance of payment, the bank had taken the draft from Oneal which had been refused by his house, and that I thought they ought to pay it, as had we supposed there was any question about the payment of the draft we should have required bill of lading for the cattle.

Cross-int'y 7th. Who represented the parties hereto at the final meeting at Will's Point?

Answer of McCart. I have fully answered in both direct and cross interrogatories preceding.

Answer of Lomax. Robert McCart represented the bank.

Answer of Britton. Robert McCart was the attorney of the bank at that meeting.

Answer of Nichols. Robert McCart was the representative of the bank.

Cross-int'y 8th. What did Oneal do at said meeting respecting the bal. due the bank not settled by the Dawson note? Did he secure it or pay it in money, cattle, or otherwise? Does he still owe it? If not, when and how was it settled? After the delivery of the cattle to Dawson is it not true that the bank bought the
476 remainder or a portion of the remainder of Oneal's cattle or took a lien upon them?

Answer of McCart. Oneal has not settled, secured, or paid, to my knowledge, the balance due the bank or any part thereof.

Answer of Lomax. John Oneal still owes the bank a *the* balance left of his note dated Dec. 10th, 1879, after the Dawson credit; it has never been paid or satisfied or secured further subsequent thereto, and the bank had no transaction with Mr. Oneal since that time.

Answer of Britton. I was not present at the meeting *of* Will's Point. Oneal did not secure the balance due the bank by liens on other property to the bank.

Answer of Nichols. John Oneal still owes the bank the balance on his said note dated Dec. 10th, 1879, the only credit thereon being the endorsement, as stated, for our share of the Dawson note. Nothing but this has ever been received on Oneal's note, or has it in any way been paid or satisfied or secured further subsequent to the credit referred to. The bank has had no further dealings with Oneal since this credit made as stated above.

Cross-int'y 9th. Immediately after the execution of the note by Dawson, is it not true that Judge Watts, for complainants, called

upon Oneal for security of the amount of complainants' de-
477 mand disputed by him, and did not Oneal then propose to pay complainants, by way of compromise, fourteen thousand dollars (including interest on the Dawson note) and ask — said proposition be submitted to complainants, and that action as to said disputed amount be postponed for a day or two until complainants could be heard from, and that if said proposition was not accepted he would immediately arbitrate with complainants the said amount and pay or secure the same, and was not this done after consultation with the representatives of the bank for purposes of delay and to enable Dawson to get out of the country with the cattle?

Answer of McCart. Judge Watts did ask Oneal to secure him for the balance claimed by him. I don't know what Oneal promised to pay pl'ffs by way of compromise. I know that he did say to pl'ffs' agent, Watts, that he was ready and willing to arbitrate with pl'ffs and would pay or secure whatever the arbitrators should award against him. This was not done after or upon consultation with me nor upon any instigation, nor was not done for the purpose of delay to enable Dawson to get out of the country with the cattle. I in no way interfered or took part in the dispute with pl'ffs and
478 Oneal as to the amount of Oneal's indebtedness to them. The representatives of pl'ffs had every opportunity to stop Dawson from leaving the county of Van Zandt.

Answer of Lomax. I was not present at the meeting at Will's Point and know nothing of the matter referred to, of my own knowledge.

Answer of Britton. I was not at Will's Point and know nothing of what happened there, of my own knowledge.

Answer of Nichols. I do not know, of my own knowledge, what, transpired at Will's Point, not having been present.

Cross-int'y 10th. When the representatives of the bank left Will's Point on the occasion referred to did they not know, understand, or believe, from consultations with or statements by Oneal or his attorney, that said Oneal did not intend or was unable to secure the disputed amount of pl'ffs' debt? Why did not the bank's representatives then demand security of the balance due the bank; if they made such demand what answer was made and what was done?

Answer of McCart. I did not know, understand, or believe, from consultations with or statements by Oneal or his attorney or otherwise, that said Oneal did not intend or was unable to secure the
479 disputed amount of plaintiffs' debt; on the other hand, Oneal stated that he would secure whatever amount he was owing pl'ffs over and above the amount of Dawson's note. I did not demand security for the balance due the bank, because there was only a small amount—about $630.00—due them, and besides, as will be seen by the original bill of sale drawn by me, the bank was further and already secured by a lien on 100 *hundred* head of horses, all of which I well knew at the time. I would have demanded security for this balance if pl'ffs' representatives had demanded security, and I did ask Judge Watts if we should insist on Oneal's giving security before we permitted Dawson to take the cattle, and we agreed to let

Dawson take the cattle and I would run any risk of getting the balance due the bank and he, on his part, would take the chances of Oneal's paying or securing the pl'ffs.

Answer of Lomax. I was not present and, of my own knowledge, know nothing of the matter referred to.

Answer of Britton. My answer to 9th cross-interrogatory is my answer to this.

Answer of Nichols. I was not present and, of my own knowledge, know nothing of the matters referred to.

480 Cross-int'y 11th. Pending the arrangements at Will's Point between the parties was not Dawson impatient to leave, and did he not finally prevail on the parties to prepare at once the papers he was to sign and allow him to depart with the cattle already being driven?

Answer of McCart. Yes; Dawson was anxious to get away, but when he signed the note the cattle were but a few miles from Will's Point and remained there until the next day; but the papers were not prepared and executed because Dawson was anxious to get away.

Answer of Lomax. I was not present and, of my own knowledge, know nothing of the matters referred to.

Answer of Britton. My answer to the 9th cross-interrogatory answers this.

Answer of Nichols. Not being present, I have no personal knowledge of the matters referred to.

Cross-int'y 12th. Did not Dawson replevy the cattle sequestrated at pl'ffs' suit in Montague county? How long was he delayed in consequence of the writ of sequestration? Was not Red River up at the time of the levy of the writ of sequestration, and is it not true that the cattle, after they were replevined by Dawson, were driven across Red River as early as they could safely have been

481 crossed if the writ of sequestration had not been levied?

Answer of McCart. Dawson did replevy the cattle. I do not know how long he was delayed. I do not know whether Red River was up or not. I do not know whether the cattle could have crossed Red River earlier than they did or not.

Answer of Lomax. Dawson replevied the cattle. I know nothing of the other matters referred to, of my own knowledge.

Answer of Britton. Dawson did replevy the cattle. I was not present when they were levied upon or when they were replevied, and cannot, therefore, answer the remainder of this interrogatory.

Answer of Nichols. I know that Mr. Dawson replevied the cattle. Not being present, I know nothing of the other matters inquired into, of my own knowledge.

Cross-int'y 13th. Did not the bank cause Dawson's replevy bond to be made? Who were the sureties on the replevy bond? Did not the bank agree to hold them harmless as sureties, and was not the replevy bond made in the interest of the bank?

Answer of McCart. I do not remember who went on the bond.

I do not know in whose interest the bond was made. I do
482 not know whether or not the bank agreed to protect the sureties.

Answer of Lomax. The bank, as an act of good faith with Dawson and in order to perform its agreements with him, did procure for him the replevy bond and agreed to hold the sureties thereon harmless.

Answer of Britton. The bank, in order to protect itself and to preserve and fulfill its obligations and contracts between the plaintiffs, the bank, and Dawson, did cause Dawson's replevy bond to be made and did agree to indemnify the sureties.

Answer of Nichols. The bank did cause the replevy bond to be made for Dawson and agreed to hold the sureties thereon harmless, because the bank felt bound to carry out its agreement with Dawson and also to protect its own interests.

Cross-int'y 14th. What became of the cattle after they were replevied? Were they not driven on and sold? Who sold them? And state what was done with the money realized from the sale. Did Dawson pay any part of his note; if so, how much and to whom? What did he do with the remainder of the money? Did he not deposit enough with the bank to cover his entire note, and was not this and some arrangement to a like effect the understanding
483 when the *when the* sureties signed the replevy bond? What was the arrangement? Was it carried out? Has Dawson ever paid anybody for the cattle delivered to him by Oneal?

Answer of McCart. I do not know who sold the cattle nor where the cattle were driven to. The only money I know of Dawson paying on his note is the sum of $3,419.00. He paid this money at Will's Point to Gen. McCulloch, as I have already stated in my direct examination. I do not know of any money he deposited or paid to the bank. I do not know of any arrangements or understanding between Dawson and the bank or the sureties.

Answer of Lomax. Of my own knowledge I know nothing of the disposition of the cattle after their replevin. John Dawson paid the full amount of what remained due on his note to Hunter, Evans & Co. and this bank after the credits made by McCulloch, which amount is now held by the bank awaiting the judgment of the court in this cause.

Answer of Britton. I do not know what was done with the proceeds of the cattle. Mr. Lomax, the cashier of the bank, has possession of the books of the bank and will answer for the bank.
484 I myself am not personally cognizant of the matters inquired about in this interrogatory.

Answer of Nichols. I do not know, of my own knowledge, what was done with the cattle after Dawson replevied them. Mr. Dawson paid over to the bank what remained due on his note to the bank and Hunter, Evans & Co., and it is now held by the bank awaiting the decision of this case.

Cross-int'y 15th. Attach to your answers a copy of the note executed by Dawson at Will's Point, and identify it. Where is the original? Why is it that neither the bank nor Dawson in their

answers to this suit tender to the complainants the amount due them upon said note, as the bank and Dawson are contending that the Fort Worth agreements remained in force?

Answer of McCart. The last I saw of the Dawson note it was in the possession of Gen. McCulloch at Will's Point. I do not know why Dawson or the bank do not tender any money in this case.

Answer of Lomax. I cannot attach a copy of the Dawson note hereto, as I have none. The original is, I suppose, in the possession of Gen. McCulloch, who was appointed mutual agent, and re-
485 ceived the note as such agent. The reason why the bank has not tendered to the complainants the amount of their part of the Dawson note is because the bank is nowise liable therefore, not being responsible for Mr. Dawson's debts or notes, and, beside, complainants having sequestrated the cattle, I suppose, to have all they are entitled to in this case.

Answer of Britton. I cannot attach a copy of said note to my deposition, because it is not in my possession; neither is it in possession of the bank. The reason why the bank has not tendered to complainants the amount due them on said note is that complainants had sequestrated the cattle, and, I presume, to be fully indemnified by the replevy bond in this case.

Answer of Nichols. I have not the Dawson note nor any copy of it. The original is, I suppose, in the hands of Gen. McCulloch, who received it as the mutual agent of the bank and Hunter, Evans & Co. I do not know of any reason why the bank should make a tender for a debt of Dawson, and therefore no tender was made by the bank. I cannot answer for Dawson, but suppose he considered the sequestration by pl'ffs covered all they were entitled to.

486 Cross-int'y 16th. In your answer to this 16th interrogatory please state fully what was done with the proceeds of the sale of the cattle by Dawson; where the said proceeds now are, and what disposition is proposed to be made of the same.

Answer of McCart. I know nothing of my own knowledge.

Answer of Lomax. I have answered this in my answer to the 14th cross-interrogatory.

Answer of Britton. I do not know where the money is of my own knowledge. Mr. Lomax, cashier, will answer this interrogatory. If said proceeds are on deposit with the City National Bank, as I suppose they are, they will be held to satisfy whatever judgment may be rendered by the court in this case.

Answer of Nichols. I have answered this question in my answer to the 14th cross-interrogatory.

Cross-int'y 17th. Do you know anything of either of two certain drafts drawn by Wm. Hunter on the complainants, each for the sum of twenty-five hundred dollars, in favor of S. W. Lomax, cashier, one stated to be on account of Oneal & the other on account of Oneal & Adkinson; one dated May 30th & one June 21st, 1879?

487 If yea, state what was done with proceeds of said draft. Were they not put to the credit of said Oneal? State all you know about said drafts. Did not said drafts constitute a part of pl'ffs' claim disputed by Oneal at Will's Point?

Answer of McCart. I know nothing of my own knowledge.

Answer of Lomax. There were two drafts such as are described, save that I do not know for whose account they were expressed to be drawn. These drafts were placed to the credit of Oneal. I do not know whether they constituted a part of pl'ffs' claim disputed by Oneal at Will's Point or not.

Answer of Britton. Under the guarantee of Hunter, Evans & Co. I on several occasions demanded of Wm. Hunter drafts on Hunter, Evans & Co., to be used in the reduction of Oneal's indebtedness to the bank, and on the several occasions he gave the bank the drafts or exchange, which was paid. I do not know whether he gave the two drafts mentioned in this interrogatory or not, but Mr. Lomax, who has the books, can answer; also as to which officer of the bank gave the certificate. I do not know whether these drafts are a part of the disputed account of Oneal or not.

488 Answer of Nichols. I don't know anything of the drafts inquired about. The books of the bank will show.

Cross-int'y 18th. Did not one of you, as an officer of the def't bank, give a certificate that sums realized from said drafts were placed to the credit of said Oneal; if so, which one of you, and was said certificate true or false?

Answer of McCart. I know nothing, of my own knowledge.

Answer of Lomax. I do not now remember having given such certificate, but if given by me the same is true.

Answer of Britton. I do not remember of having given such certificate; if I did, it was correct, as I would not have given such certificate without an examination of the books of the bank.

Answer of Nichols. I do not now know or remember about the certificate, but if such a one was given by me it is true.

Cross-Interrogatories to John Dawson Alone.

Cross-int'y 19th. Did you dispose of any of the cattle delivered to you at Will's Point before the levy of the writ of sequestra-

489 tion in Montague county; if so, how many & what way, to whom, at what price, and, if by exchange, state precisely the trades made; what did you do with the proceeds of such sales & exchanges?

Answer. I sold 263 head of said cattle on the 22d of May, before I left Van Zandt Co., as I have before stated, and paid the proceeds (of such portion as he was entitled) to Gen. McCulloch, $3,419.00, which was credited on my note in Will's Point by Judge Watts. I sold said cattle to Frank Houston at $13.50 per head, the amount of said sale being $3,550.50. The amount paid to McCulloch as agent, as purchase-money, by agreement of all parties, being $3,419.00, as aforesaid, that being the original contract price between Oneal & myself. On the 26th day of May I again made a sale to Frank Houston. I think I sold him 102 or 103 head; I can't remember the exact number; at the same time I exchanged with him either 10 or 20 head of cows that were about to have calves, or other cattle,

with McCulloch's consent and approbation. The proceeds of
490 this transaction was $2,060.00, of which amount I turned over to Gen. McCulloch the sum of $1,842.00, being the amount of purchase-money due him as agreed on between Oneal and myself. When I reached the edge of Montague county I there exchanged 4 or 5 cows, that had dropped or were about to drop calves, for other cattle, and when the new cattle were put in the herd they were branded with the same road brand with the other cattle. All this was done with McCulloch's approbation and consent.

Cross-int'y 20th. Is it not true that you exchanged some of said cattle for others and some money, and how much money, and what did you do with it; did you pay it to Gen. McCulloch; if so, where? State fully with respect to every trade and sale made between Will's Point & Montague county, and in Montague county, up to the date of the levy of the writ of sequestration.

Answer. I have fully answered this interrogatory in my answer to the next preceding interrogatory.

Cross-int'y 21st. Is it not true that Oneal delivered to you
491 at Will's Point precisely the number and description of cattle branded O N, mentioned and described in complainants' original petition in this case and in the affidavit and writ of sequestration?

Answer. It is not true that the description of said cattle in pl'ffs' petition and affidavit corresponds with the cattle seized and taken from me under the writ of sequestration in this case. The affidavit calls for 1,478 head. The number purchased from Oneal was 1,741 head. The affidavit calls for cattle nearly all branded O N, whereas, according to my recollection, there was 100 or 200 head that were not branded O N, and some of no brands or marks except ∧—road brand.

Cross-int'y 22nd. During the time said cattle were kept by the sheriff of Montague county how did he keep them and who herded for him? Are you related to any of the officers of the def't bank; if so, which one, & how?

Answer. The sheriff put Gen. McCulloch and Sampsel in charge of the cattle. My hands herded them. I am not now related
492 to any officer of the bank. John Nichols' daughter was my wife at that time, but she has since died.

Cross-int'y 23rd. After the levy of the writ of sequestration in this case and you had replevied the cattle, did Gen. McCulloch go on with the cattle or with you; if so, at whose instance, for what purpose, and in what capacity?

Answer. After I had replevied the cattle I employed Gen. McCulloch to assist me in driving the cattle through to fill my contract. He was employed by me as a hand and guide.

Cross-int'y 24th. To what extent have you considered and treated the Ft. Worth agreements as rescinded by the commencement and prosecution of this suit? By what acts have you respected and what disregarded the said agreements? State fully and in detail.

Answer. I have not in any way, to my knowledge, treated the Ft. Worth agreements as rescinded, so far as I am concerned. Of course

when the pl'ffs caused the cattle, which they had induced
493 me to buy, to be levied on I could do nothing but replevy them. I am now and have always been willing to pay my note for the purchase-money of said cattle whenever it is produced to me for payment.

Cross-int'y 25th. At the time you left Will's Point had Oneal declined to secure the pl'ffs the amount of their claim disputed by him? Did you not know at that time that by the terms of the contract between the parties hereto the said Oneal was bound to secure said amount?

Answer. At the time I left Will's Point I supposed everything had been settled between pl'ffs and Oneal, and was informed by pl'ffs' agents that everything was concluded so far as I was concerned. I did not know that by the terms of my contract Oneal was bound to secure pl'ffs in any amount. I only attended to my part of the business, namely, to get my bill of sale and to settle my part of the business with all the parties satisfactorily and to move the cattle on to their destination, and after having been assured by all parties that everything was satisfactory on my part
494 I left without paying any attention to any other matter.

Cross-int'y 26th. Were you present at the negotiations which entered into the agreements at Ft. Worth?

Answer. I was present at that time.

Cross-int'y 27th. Does your bill of sale show the number of cattle in the O N brand delivered to you at Will's Point; was said bill of sale recorded?

Answer. I supposed the bill of sale shows the number. It was recorded.

Exhibits Attached to the Deposition of S. W. Lomax, Being Letters Marked from Nos. 1 to 6 and Marked with the Initials "S. W. L." and the Numbers 1 to 6

"No 1." "S. W. L."

TERRELL, *May 24th*, 1880.

City National Bank, Ft. Worth, Texas:

GENTLEMEN: Mr. J. A. Oneal delivered to Mr. J. M. Dawson a herd of cattle to-day amounting in value to $1,933.10, for which I hold Mr. Dawson's note, due with 10 % int., payable as the cattle are sold. All parties interested in this transaction being
495 represented by their attorneys, it was determined that your proportion of this sum should be $10,339.95 and that of Hunter, Evans & Co. should be $9,915.75. Mr. Dawson made a sale to-day of 253 cows & calves *and* ($13.00) cost, or $3,419.00, of which your proportion is $1,750.50, which I transmit herewith, less the premium on the exchange, in a sight draft on the Bank of Commerce, Missouri.

The premium of ½ per cent. is more than I had expected to pay, but the best I could do.

Hoping this will be satisfactory, I am, most respectfully,

Y'r ob't serv't, HENRY E. McCULLOCH.

No. 2. "S. W. L."

ALLEN, COLLIN Co., *May 26th*, 1880.

To the City National Bank, Ft. Worth, Texas.

GENTLEMEN: The herd will cross the Central railroad here to-day in fair condition. While I was gone to Terrell to collect the $3,419.00 or draft Mr. Dawson sold Frank Houston 100 beef steers and 4 dry cows—beefes at $20.00 & cows at $15.00. When I reached the herd Mr. Dawson said that Mr. Houston would place the money at McKinney or Sherman, so that I could get it on my way up,
496 but when the settlement was made after the cattle was delivered, and the herd had traveled 6 or 8 miles, Mr. Houston said that he thought he was getting the beefes & cows on a balance which Mr. Dawson owed him on the heifers he had sold him for Mr. Allen, and that he could not pay the cash for them. Under these circumstances I took a draft from Frank Houston on Mulhall & Scaling, of E. St. Louis, in favor of Hunter, Evans & Co., for $1,842.00, payable on the 22nd day of next month. You will see from this draft that Mr. Dawson pays me only the cost of the cattle, when my understanding of the contract is that I am to collect the amount of sales until his note is paid, and I want your views on this subject. Mr. Dawson is to deliver 1,050 two-year-old heifers to Mr. Allen at some point in the Indian Territory, and he can write to me at that place to Mr. Allen's care. The proportion of the $1,842.00 coming to Hunter, Evans & Co. is $902.12, while your proportion is $939.88, of which I send you a draft on them payable on the 22nd day of next month, which I hope will be satisfactory to all parties. If Frank Houston's draft is paid at maturity
497 you will realize sooner than from sales made at Caldwell; but if I had not expected to send you the money in a few days the cattle would not have been delivered to Mr. Houston.

Most respectfully, y'r ob't servant,

HENRY E. McCULLOCH.

"No. 3. S. W. L."

RED RIVER STATION, *June 7th*, 1880.

City National Bank, Fort Worth.

GENTLEMEN: I have your notice of the revocation of my agency and cannot complain of it, as I was proposed to you by Hunter, Evans & Co.; but as I feel that I have acted in as perfect good faith to you as I have to them it seems to me that you could have as well have continued me as your agent (I being already with the herd) as to have employed another. My agreement being for a certain trip for which I had to arrange my own business at some sacrifice, it will prove quite a hardship on me should Hunter, Evans & Co. refuse or fail to pay me what is right, but I have every reason to believe they will do right with me, as I and Col. Evans are old friends.

Yours truly, HENRY E. McCULLOCH.

"No. 4. S. W. L."

498 INDIAN TERRITORY, INDIAN SPRINGS, *June* 17*th*, 1880.

To the City National Bank, Fort Worth, Texas.

GENTLEMEN: When I drew the draft in your favor on Hunter Evans & Co., as business men, I expected them to accept upon condition of the payment of the Houston draft, and am as much surprised as you can possibly be that they did not do so, and am of the opinion that they still intend to pursue that course if they collect the draft, and have so written them and urged them and asked them to notify you and myself of such intention. This is as far as I can consistently proceed at present, and if they should disappoint me in this will, upon consultation with you, do all in my power to secure your interest.

Most respectfully, &c., HENRY E. McCULLOCH.

"No. 5. S. W. L."

CALDWELL, KANSAS, *June* 25*th*, 1880.

To the City National Bank of Fort Worth, Texas.

GENTLEMEN: I am in receipt of a letter from Hunter, Evans & Co. of the 19th inst., in which they intimate that they will not pay the draft I gave you on them for your proportion of the
499 $1,842.00 Houston draft, but as I did not understand it to be a positive refusal, and as they have not collected the Houston draft, I still believe they will pay it if the Houston draft is paid. I have written them again to-day and will inform you what there answer is as soon as I get it. I feel both mortified and troubled about this matter and do hope they will pay the draft.

Y'rs respectfully, HENRY E. McCULLOCH.

"No. 6. S. W. L."

HUNNEWELL, KANSAS, *July* 3*rd*, 1880.

To the City National Bank of Fort Worth.

GENTLEMEN: After passing several letters with Hunter, Evans & Co. on the subject of the draft I gave you on them, I have what I must regard as their final reply, and which I quote from in order that you may understand them fully: "Now, in regard to the Houston draft, will say that we have collected same; as we wrote you in previous letter, will most certainly decline to pay any part of it to Fort Worth bank until termination of suit in Montague county, at which time, should they beat us, we will pay them the amount of your draft, with 10 per cent. interest from the 25th day of this month, which is date of collection." Thus far I have done all that I
500 knew how to do in order to get them to pay it, and — now willing to render you any further aid that is in my power consistent with my honor, and you have but to inform me what you

wish me to do to secure my full co-operation. Just at this time I do not know where to tell you to write to me, but will be able to determine in a few days and will drop you a P. C.

Very respectfully y'r ob't s'v't, ——— ———.

"S. W. L."

$939.88. ALLEN, COLLIN CO., TEXAS.

On the 22d day of next month (June, 1880) pay to the order of the City National Bank of Fort Worth, Texas, nine hundred and thirty-nine $\frac{88}{100}$ dollars, as their proportion of a draft of $1,842.00 given by Frank Houston on Mulhall & Scaling, of East St. Louis, payable on the 22nd day of next month, which draft was given for cattle sold Houston by J. M. Dawson.

HENRY E. McCULLOCH.

To Mess. Hunter, Evans & Co., East St. Louis, Ill.

(Endorsed:) Pay to the order of G. H. Goddard, c'r, for collection account of the City National Bank of Fort Worth, Texas. S. W. Lomax, cash'r. No. 2793.

501 "S. W. L."

THE CITY NATIONAL BANK OF FT. WORTH,
FT. WORTH, TEX., *May 14th*, 1880.

Received of the City National Bank of Ft. Worth, Tex., the sum of one hundred dollars on account of services and expenses to be rendered and incurred in the matter of superintending the drive and sale of the Oneal cattle per stipulation of contract between Jno. A. Oneal, Hunter, Evans & Co., Jno. M. Dawson, & the City Nat'l Bank.

HENRY E. McCULLOCH.

EXHIBIT "A." "S. W. L."

FT. WORTH, TEX., *Dec. 10th*, 1879.

Know all men by these presents that I, John A. Oneal, of the town of Will's Point, in the county of Van Zandt and State of Texas, for and in consideration of the sum of nine thousand eight hundred and ten dollars & eleven cents, have this day sold, transferred, and delivered to John Nichols, of Ft. Worth, Tex., all my right, title, and interest in my home stock of cattle, consisting of beefes, two, three, & four years old, cows, bulls, & yearlings and calves marked and branded as follows: branded O N on hip and sides and marked with swallow fork in each ear, subject to a bill of sale of the above-described property to Hunter, Evans & Co. now on
502 record in Van Zandt county; also I have this day sold and delivered to the said John Nichols all of my home cattle

branded H on hip and marked under slope in one ear and under half crop in the other ear, known as the John Howell mark and brand, and all my cattle branded thus, H on hip, I on shoulder, and marked swallow fork in the left ear and under bit in the right ear, known as the Henry Fuller stock, and one hundred head of horses, mares, and colts, branded O N on left shoulder.

Witness my hand this 10th day of December, 1879.

JOHN A. ONEAL.

Witness- to signature:
ROBERT McCART.
S. W. LOMAX.

STATE OF TEXAS, *Tarrant County:*

Before me, the undersigned, notary public in and for said county, personally came Robert McCart, and, being duly sworn, says that he saw John A. Oneal sign the same, and that he and S. W. Lomax signed the same at the request of the said Oneal.

ROBERT McCART.

Subscribed and sworn to before me this December 12th, 1879.

J. C. SCOTT, [SEAL.]
Notary Public, Tarrant County, Texas.

503 Filed for record December 16th, A. D. 1879, at 5 o'clock p. m., and duly recorded Dec. 16th, A. D. 1879, at 6 o'cl'k p. m., in Book W, on page 174.

T. J. FOSTER,
Clerk C. C., V. Z. Co., Texas.

STATE OF TEXAS, *County of Van Zandt:*

I, T. J. Foster, clerk of the county court of Van Zandt county, do hereby certify that the annexed bill of sale or instrument of writing and certificates of authentication *was* duly recorded in my office in Record Book No. W, page 174, by me on the 16th day of December, 1879, at six o'clock p. m.

To certify which I hereto sign my name and affix the seal of my office, at Canton, this the 16th day of December, A. D. 1879.

T. J. FOSTER, [SEAL.]
Clerk C. C., V. Z. Co., Texas.

"S. W. L."

$9,810.11. FORT WORTH, TEXAS, *Dec.* 10, 1879.

One day after date I promise to pay to the order of John Nichols, negotiable and payable at the City National Bank of Fort Worth, nine thousand eight hundred & ten dollars and $\frac{11}{100}$ dollars, for value received, without defalcation or discount; if not paid at maturity to bear interest at the rate of twelve per cent. per annum from date;

and hereby further agree that if this note is not paid when
504 due to pay all costs necessary for collection, including ten per cent. for attorneys' fees.

No. 1535. JNO. A. ONEAL.

(Endorsed:) Without recourse on me—John Nichols. Received on this note this 22nd day of May, 1880, nine thousand seven hundred and fifteen dollars and $\frac{75}{100}$ dollars, assumed by John Dawson.

EXHIBIT "B," attached to deposition of A. M. Britton and marked "A. M. B."

Whereas John Oneal, of Will's Point, Van Zandt county, Texas, is indebted to Hunter, Evans & Co., of East St. Louis and State of Illinois, and also to the City National Bank of Ft. Worth, Texas, in a large amount; and whereas the said Hunter, Evans & Co. and the said City National Bank of Ft. Worth have liens upon the home stock of cattle to secure said indebtedness of the said John Oneal; and whereas the said John Oneal has this day entered into a written contract with one John Dawson, of Tarrant county, Texas, for the sale and delivery of the said cattle belonging to the said John Oneal on the terms and conditions as shown by a written contract executed and delivered between the said John Dawson and the
505 said John Oneal, and by the terms of said contract the said John Dawson is to assume the payment of the said John Oneal's indebtedness to the said Hunter, Evans & Co. & the said City National Bank of Ft. Worth, provided the said John Oneal shall deliver to the said John Dawson sufficient amount of cattle, as per contract price of said cattle, as shown by the said written agreement between the said Dawson & the said Oneal to pay off said indebtedness: In the event that the cattle sold and delivered by the said Oneal to the said Dawson shall not be sufficient to pay off and discharge the full amount of said indebtedness, then the said Dawson assumes & binds himself to pay off & discharge the said indebtedness *pro rata* to the extent of the cattle received, which payment shall be made by the said Dawson to the said Hunter, Evans & Co. & to the said City National Bank of Ft. Worth by the first day of October, 1880. It is further agreed that this sale is made subject to the liens of the said Hunter, Evans & Co. & the said City National Bank of Ft. Worth, and that the said Dawson holds said cattle in trust for the said Hunter, Evans & Co. & the said City Na-
506 tional Bank of Ft. Worth, as stipulated in this agreement.

It is further agreed that the said Hunter, Evans & Co. & the City National Bank of Ft. Worth shall together select a man to accompany the said Dawson in driving said cattle from Texas to any point said cattle may be sold, and the man so selected shall have the legal possession of said cattle, and he shall receive the proceeds of the sale of said cattle from any & all purchasers of said cattle to the extent & amount of the said indebtedness assumed by the said Dawson.

In the event that the said Hunter, Evans & Co. & the said City National Bank of Ft. Worth, Texas, cannot agree upon the person

to accompany said cattle, then the said Hunter, Evans & Co. & the City National Bank of Ft. Worth shall each one select a person, & the two persons so selected then shall have the joint possession of said cattle and shall jointly receive the proceeds of the sale of said cattle. It is further agreed that should the said Dawson not sell said cattle by the first of October, 1880, then the said Hunter, Evans & Co. & the said City National Bank of Ft. Worth shall have
507 the power & authority to take possession of said cattle and dispose of the same and apply the proceeds thereof *pro rata* to the said indebtedness.

It is further agreed that the said Dawson shall have handling and control and disposition of said cattle, subject to the stipulation heretofore expressed.

In witness whereof we have, this 20th day of March, 1880, set our hands & seal to this agreement.

JOHN M. DAWSON.
HUNTER, EVANS & CO.,
By W. HUNTER.
CITY NATIONAL BANK,
By A. M. BRITTON, *V. P.*

Attest:
A. T. WATTS.
ROB'T McCART.

EXHIBIT "C," "B. M. A.," to Britton's deposition.

STATE OF TEXAS, *County of Tarrant:*

Whereas Hunter, Evans & Co., of East St. Louis, Ills., & the City National Bank of Fort Worth, Texas, have each of them liens upon certain cattle described in said written liens to secure the payment of certain moneys due the said Hunter, Evans & Co. and the said City National Bank by John A. Oneal; and whereas the said John A. Oneal has sold said cattle mentioned in said liens, to John
508 Dawson: Now, therefore, this agreement witnesseth: That the said Hunter, Evans & Co. and the City National Bank agree to said sale, provided the said Jno. A. Oneal shall, upon the delivery of said cattle to said Dawson, surrender to the said Hunter, Evans & Co. and the said City National Bank the proceeds of said sale, to wit, the paper of said Dawson, together with the contract of sale, and the said Hunter, Evans & Co. and the City National Bank agree to receive the same in discharge, payment, and satisfaction of their said claim, provided said paper or the proceeds of said cattle amount to a sum equal to the amount of their debts—that is, the full amount of indebtedness from said Oneal to the said Hunter, Evans & Co. and the City National Bank; but should the paper, liens, &c., arising from the sale of said cattle by said Oneal to said Dawson be less than the amount of said debts, then the said Hunter, Evans & Co. and the said City National Bank agree to receive the same and

credit said paper and proceeds upon the debt of said Oneal by prorating the same according to the amount received and according to the respective debts of them, the said Hunter, Evans & Co.
509 and the City National Bank, and the deficiency, if any there be, between the sale of said cattle and the amount of said indebtedness the said Oneal hereby obligates and binds himself in lieu thereof to either, at the option of said Oneal, to pay in money or to pay in his, said Oneal's, note, well and sufficiently secured, to the satisfaction of them, the said Hunter, Evans & Co. and the City National Bank, by giving deeds of trust or such other liens upon the property, real or personal, as in Van Zandt county shall be of value sufficient to pay such deficiency, if any there be; and it is further agreed by and between the said Hunter, Evans & Co. and the said City National bank and the said Oneal that should there arise any difference or trouble about the amount of the indebtedness of the said Oneal to said Hunter, Evans & Co. or the said City National Bank, then the amount agreed to be due between the parties shall be adjusted, satisfied, and discharged as aforesaid, and the amount in dispute shall be secured by said Oneal as aforesaid, and when the parties to said disputed amount agree or when the same shall be determined by suit, arbitration, or otherwise, then said amount to be paid *so* hereinbefore stipulated, to wit, from the proceeds of said sale or from the security fur-
510 nished by the said Oneal; and it is further agreed that should there be a deficiency between the amount of said sale of cattle by said Oneal — the said Dawson and the amount of said Oneal's indebtedness as aforesaid such deficiency, after being secured as heretofore provided, shall be carried, owned, & held by and between them, the said Hunter, Evans & Co. and the said City National Bank, according to their respective claims, and the collections arising therefrom to be prorated as hereinbefore provided for on the claims of them, the said Hunter, Evans & Co. and the said City National Bank.

It is further understood and agreed by and between the parties hereto that should this agreement, from any cause whatever, fail to be carried out and consummated, then no statement or recital herein shall be construed to be an abandonment of any right, lien, or security held by any of the parties hereto. It is further agreed that this instrument shall be deposited with the City National Bank of the city of Fort Worth and county of Tarrant, and by them held and safely kept, each party hereto or their attorneys at all times having access to the same and each party hereto entitled
511 upon demand to a copy thereof. It is further agreed that should there be a deficiency as heretofore referred to, then the said Oneal agrees to secure said deficiency in manner as aforesaid by liens upon property owned by said Oneal, real or personal, and such deficiency to bear interest at the rate of 12 per cent. per annum from date and to mature on or before the 1st day of January, 1881; that this deficiency to be secured and delivered as above provided at the time said cattle are delivered over to the said John Dawson.

In testimony whereof we, the said Hunter, Evans & Co., City National Bank, and Jno. A. Oneal, hereunto set our hands and scrolls for seal this 20th day of March, 1880.

JOHN A. ONEAL. [SEAL.]
CITY NATIONAL BANK
OF FORT WORTH, [SEAL.]
By A. M. BRITTON, *V. P.*
HUNTER, EVANS & CO. [SEAL.]
By W. HUNTER.

Attest:
J. C. KEARBY.
A. T. WATTS.
ROB'T McCART.

Depositions of John Oneal, J. C. Kearby, A. B. Allen, and John M. Lillard, witnesses for defendants, taken by and sworn to before A. H. Benners, a notary public of Dallas county, Texas, on the 3rd day of June, 1882.

512 Int'y 1st. Are you acquainted with the parties to this cause?

Answer of Oneal. I am.

Answer of Kearby. I am acquainted with some of the plaintiffs; not with others. I know the defendants.

Answer of Lillard. I am acquainted with Capt. Evans, of pl'ffs; am acquainted with def'ts.

Answer of Allen. I am.

Int'y 2nd. If you know, you will state why and on what consideration the notes described in complainants' original petition were executed by defendant Oneal, if they were executed by him, and state whether they represented a real consideration, ascertained and agreed on when they were executed, or a proposition, liability, or something else; and, if so, what.

Answer of Oneal. The consideration on which said notes were executed was partly advances that the pl'ffs had made to me on cattle, and the balance of the amount of said notes was for advances that it was agreed they would afterwards make. They only rep-
513 resent a real consideration for a part, and for the balance a prospective liability.

Answer of Kearby. I know nothing of my own knowledge of the matters inquired about.

Answer of Lillard. I know nothing of it.

Answer of Allen. I don't know.

Int'y 3rd. Have you seen and examined pl'ffs' statement of account against defendant, John Oneal, as exhibited in their pleadings and in their depositions taken and filed in the State court in this case? And, if you have, you will state whether there are any items or charges in them that are unjust or untrue; and, if so, point out the items and state the objections to each, and state the source or means of your information, whether derived from intercourse or communications with pl'ffs or their agents, or otherwise.

Answer of Oneal. I have seen pl'ffs' statement of account in the transcript in this case. There are incorrect and unjust items in it. All items charged me of payments to shippers are not correct or just, except $40.00 paid McMillen. If they have any showing for the others they are correct, but they had positive in-
514 structions to pay nothing to shippers without instructions from me. The items relating to cattle shipped to Chicago before September are incorrect and not just, because they had no authority to ship to Chicago nor any instructions from me to ship away from St. Louis before September. All items of drafts drawn for me or charged to me—drawn by W. Hunter—are incorrect and unjust, except the draft of June 24th, 1879, for $2,500.00 He drew it without my consent and I ratified it. The items of interest in the account are wrong in this, that they compounded interest monthly and charged interest and discount also on my notes, the notes drawing interest. A. G. Evans said to me that these charges of interest were wrong and that they would knock it off. There are incorrect items for hauling cripples, for which cripples, except one, I find no credit to my account. The item of Sept. 17th, 1879, cash sent by Hunter, $6,641.36, I do not understand, though it is in my favor. The item of exchange on Chicago is incorrect; they had no right to ship to Chicago before September. The item of shipment to New York is not correct or just; they had no authority to ship them there when they did it.

515 Answer of Kearby. I know nothing of my own knowledge of the matters inquired about.

Answer of Lillard. I have thoroughly examined said account, pp. No-. 263–271 of record. I find that their statements of account are incorrect according to the books and papers in my possession of the defendant Oneal. The first item I find incorrect is June 3rd, 1879, "cash paid your draft, $700.00." I find no credit on the books of John Oneal to such draft and I find no stubs in the draft books of Oneal of such draft being drawn. The stubs are all filled up before that date and after that date, and there are no stubs blank or torn out between dates before and after that date. At that time he used only two draft books of his firm—one at Fort Worth and one at Will's Point—and this answer applies to both of them. The next incorrect item on said account is "July 8th, 1879, Oneal and Downing's account transferred to Jno. A. Oneal's account, $111.50." The book-keeper of plaintiff- has either erred in statement of July 1st rendered Oneal & Downing, hereto attached, marked Exhibit "A," or has erred in his final statement rendered to Jno. A. Oneal, of which the account in the
516 record is a copy, to the amount of $100.00. The next item incorrect is "Aug. 8th, 1879, cash paid Wm. Hunter, drafts, $8,898.25." From City National Bank of Fort Worth, monthly statement of account with John Oneal for Aug., 1879, and further investigation of said bank's books made by me, in connection with Mr. Lomax, cashier of said bank, we find that Wm. Hunter drew said drafts on his own form, No. 170, which was placed to his credit on the books of said bank and not to the credit of Oneal—no endorser on said drafts. I find on Oneal's books no credit corresponding

with this draft or any transaction of that nature. The next incorrect item is "Sept. 5th, 1879, bills payable, acceptance due Sept. 10th, 1879, $17,251.15." I find from the books of Oneal and from City National Bank's monthly statement to Oneal for Sept., 1879, and from investigation of said bank's books, with Mr. Lomax, cashier of said bank, that Wm. Hunter drew a draft on J. A. Oneal's form No. 40, and endorsed by Wm. Hunter for $17,251.15. $4,251.15 of that amount was placed to the credit of J. A. Oneal and $13,000.00 was placed to the credit of Wm. Hunter. Oneal's books and papers do not show that Wm. Hunter had any right to have such
517 amount placed to his credit or that he had any right to draw such draft, and Oneal's books and papers do not show that Wm. Hunter has accounted to him in any way for said amount. The next item incorrect is "Sept. 17th, bills payable, accepted Wm. Hunter's drafts, due Aug. 2nd, 1879, $6,724.41." I can't find anything in the books and papers of Oneal justifying any such transaction or relating to it in any way. The next item incorrect is "Oct. 22d, 1879, cash paid W. H.'s draft, $1,006.34." I can't find anything in the books and papers of Oneal justifying any such transaction or relating to it in any way. The next item incorrect is "Sept. 20th, 1879, loss on 129 cattle shipped to New York, $665.99." I claim this item is incorrect and unjust, because they do not state what cattle they were when shipped; they don't render any account of sales either from St. Louis or New York of that lot of cattle; they don't render any statement showing whether there was sustained by Oneal a loss or gain. I don't find anything relative to this transaction in Oneal's papers or books. The interest charges of "Sept. 30th, 1879, $50.06; Oct. 24th, 1879, $196.08; Nov. 25th, 1879, $278.41; Dec. 31, '79, $192.25;
518 Jan'y 31st, 1880, $158.96; Dec. 31st, 1880, $1,288.93," amounting in the aggregate to $2,164.69, are incorrect according to Oneal's books and papers, as there is nothing in them relating to said charges or showing why the same had been charged. I don't find from Oneal's books that Hunter, Evans & Co. had credit for amounts paid shippers, as charged in their account, or from any papers in his office that they had authority to pay shippers. The items are, "May 15th, paid shippers $5.00; June 9th, paid shippers $3.00; June 28th, — shippers $2.00; July 24th, paid shippers $2.00; Aug. 11th, paid shippers $13.00; Sept. 26th, paid shippers $16.00; Oct. 6th, paid shippers $2.00; Oct. 7th, paid shippers $10.00; Oct. 15th, paid shippers $10.00; Oct. 21st, paid shippers $20.00." The item of May 17th, 1879, "telegrams, $3.25," is incorrect according to Oneal's books. The item of Sept. 6th, 1879, "telegram, $1.80," is incorrect according to Oneal's books. The item of November 8th, "telegram, $2.35," is also incorrect according to Oneal's books. The item of June 4th, 1879, Oneal & Jones' balance of account, $29.40, is incorrect according to Oneal's books. He has no statement in his office showing why he should be charged with that balance. The item of July 9th, 1879, "Newton's order, $5.00," is incorrect;
519 no authority shown for it by Oneal's books and papers. The item of July 15th, 1879, Wm. Hunter's account, $221.00, is

incorrect. Oneal's books shows no such transaction and the papers show no authority for placing this account to Oneal's debit. The item of Sept. 7th, 1879, "cash paid your draft, $124.15," is incorrect, because the books do not show that amount credited and the draft books show no stub for such draft. The item of Nov. 12th, '79, discount on 3 bruised cattle, $20, which is charged Oneal's account—this is error, because the books & papers of Oneal show no authority for this charge. The item of Dec. 5th, '79, paid W. H.'s draft, $652.53, is incorrect. Oneal has nothing upon his books or among his papers that show that Wm. Hunter had any right to draw such draft or that Hunter, Evans & Co. had any right to pay it. The next item incorrect is Dec. 23rd, Oneal & Atkinson, balance of account, $2.04. They erred in making this charge, as per books & papers in Oneal's office we have no statement showing why such charge should be made. The item of Nov. 6th, 1879, exchange on Chicago draft, $16.00, is incorrect. Oneal's books & papers show no entry or reason why exchange should be charged on any draft. The
520 item Nov. 7th, '79, paid Miller for handling cattle, $8.00, is incorrect. Oneal's books & papers do not show that they had any authority to charge this to Oneal. My means of information are that I was book-keeper of Oneal from Nov., 1880, to March 12th, 1882, and had the custody and control of his books & papers and kept them.

Answer of Allen. I don't know.

Int'y 4th. If def't, John Oneal, ever gave to pl'ffs a bill of sale of any cattle state whether the transaction in which it was given was a sale or a mortgage, and if you have any paper or papers relating to that question attach the same as part of your answer.

Answer of Oneal. I did give plaintiffs a bill of sale, dated August 20th, 1879, to my home stock, a copy of which I attach to my answer, marked Exhibit "A," and make a part hereof. It was in form a bill of sale, but it was only given to secure my notes of that date and one previous to it.

Answer of Kearby. I know nothing of my own knowledge of the matters enquired about.

Answer of Lillard. I don't know.

Answer of Allen. I don't know.

521 Int'y 5th. You will state, as near as you are able, the number, brands, and value of cattle and horses owned by def't, John Oneal, in the months of March, April, and May, 1880, previous to his sale and delivery of any to def't, John Dawson, and state where they ran or used, and state also the character and value of other property, if any, owned by said John Oneal at that time.

Answer of Oneal. I owned about 150 head of horses to 175 head, branded O N mostly, some few in other brands, worth between 3,000 or $4,000. I owned about 2,400 head to 3,000 head of cattle, branded O N — hip and side, and some O N on side, and the majority "76" on shoulder or neck, and some branded H and some I and some X and various other brands, in value about $25,000.00, and if I had not been forced to sell the way I was I could have sold them for $30,000.00. They ran & used in Van Zandt, Kaufman, and Rains

counties, and some in Hunt county. I also owned $25,000.00 worth of lands and Will's Point property, and about $3,000.00 miscellaneous property—sheep, wagons, farming utensils, buggies, &c.

Answer of Kearby. I know nothing of my own knowledge of the matters inquired about.

522 Answer of Lillard. I don't know.

Answer of Allen. I don't know.

Int'y 6th. State whether, in the month of March, 1880, or about that time, there were any negotiations between said John Oneal and Hunter, Evans & Co. or John Dawson in regard to the sale of the whole or any portion of the said Oneal stock of cattle; and, if so, state what they were, and if the sale was made to John Dawson rather than to Hunter, Evans & Co. state why that was, and state also whether the contract to sell to Dawson was or was not made with the knowledge and concurrence of Hunter, Evans & Co., and state your means of knowing such fact.

Answer of Oneal. There were negotiations of that kind for the sale of all of them I could gather by the time specified in the contract between us, as the contract shows. The sale was made to Dawson rather than to Hunter, Evans & Co. because Dawson offered me more money for the cattle than they were willing to pay me for them. The contract was made with the knowledge and consent of Hunter, Evans & Co., and was signed by them by Wm. Hun-

523 ter as agent, as shown by the contract, and witnessed by A. T. Watts as attorney on their side and Rob't McCart on the bank's side.

Answer of Kearby. Some time in March, 1880, Oneal was proposing to sell to def't, John Dawson, a stock of cattle, but on account of the existence of some mortgage held by Hunter, Evans & Co. and by the City National Bank of Ft. Worth, which was said to be on these cattle, he had to obtain their consent to this sale. Oneal employed Word & Kearby, attorneys, to assist him in adjusting the matters, and I went with Oneal to Ft. Worth to get a conference with Hunter, Evans & Co. through their reputed agent, Wm. Hunter, and the City National Bank. We had a conference, the City National Bank being represented by its attorney, Rob't McCart, Esq., Oneal being represented by me, and Wm. Hunter declined the conference until he could get his attorney there, Judge A. T. Watts, who lived in Dallas. He went to telegraph for him, and Judge Watts came on the train that day. Judge Watts arriving, Oneal thereupon consum-ated the contract with Hunter, Evans & Co. and the City National Bank, of date March 20th, 1880, which was in writing, signed by John A. Oneal, the City National Bank

524 of Ft. Worth, Texas, by A. M. Britton, V. P., and Hunter, Evans & Co. by W. Hunter, witnessed by J. C. Kearby, A. T. Watts, and Rob't McCart, a copy of which is hereto attached, marked Exhibit "A." Oneal also concluded a written agreement with John Dawson, of date March 20th, 1880, signed by John A. Oneal and John M. Dawson and attested by Robert McCart and A. T. Watts, for the sale of the cattle inquired of. I hereto attach said agreement, marked Exhibit "B" — made a part of my answer. There was

also a written agreement made on the same date and signed by John M. Dawson, Hunter, Evans & Co., by W. Hunter, City National Bank, by A. M. Britton, V. P., attested by A. T. Watts & Rob't McCart, of which I attach a copy, marked "Exhibit C" and made a part of my answer. I don't know the motive that actuated the sale to Dawson; it was made with the consent of their attorney and their agent, W. Hunter. I know it because I was there and heard them all agree to it.

Answer of Lillard. I don't know.

Answer of Allen. I don't know about the negotiations to sell, nor why made to Dawson rather than Hunter, Evans & Co.,
525 nor whether with their knowledge and consent. I know of the bill of sale being executed by Oneal to Dawson when the cattle were delivered to Dawson. I wrote the bill of sale. It was made in the presence of Hunter, Evans & Co.'s agent, Lewis Evans; he concurred in it.

Int'y 7th. If you state any contract of sale was made with Jno. Dawson you will also state what was done and who by preparatory to the executing of such contract by delivery of the cattle sold. If any labor or expense was gone to please state what it was and the value of the same. If any cattle were gathered or penned please state the number, description, brands, and value, and, if penned, state where at, at what time, and for what purpose, and if Hunter, Evans & Co. or either one of them or any of their agents knew of these things being done while in process of being executed state also about that.

Answer of Oneal. I hired men and put them to work on the range to gather the cattle at my ranche, near Will's Point, & they were gathered & penned there and turned over & delivered there. The expense to me was between $500 & $600.00. They were
526 gathered for delivery. Hunter, Evans & Co. had their agent, Lewis Evans, there, & he knew what was being done. They also had their agent, Gen. McCulloch, there when the delivery was made. He was said to be representing Hunter, Evans & Co. and the bank.

Answer of Kearby. I know that Oneal went home, & about the time mentioned in Exhibit "B" he had a quantity of cattle gathered & in herd, about the 20th day of May, 1880; I cannot state number & brands. As to the amount of labor & expenses I know nothing personally. The cattle were penned in the neighborhood of Will's Point and for the purpose of delivery to John Dawson. There was one Evans, claiming to represent pl'ffs, and Judge A. T. Watts, their attorney, present and knew what was being done.

Answer of Lillard. I know there was some transaction, but I do not know the nature of it.

Answer of Allen. Yes; Oneal had the cattle gathered; I helped gather them. I don't know amount of labor & expense; I cannot give the number. They were in different brands; some were in the O N brand, hip and side, some in the H brand, some O N,
527 side, and some N O. I cannot state the value. They were penned at Oneal's ranche, about 2 miles east of Will's Point,

in May, 1880, to be delivered to Dawson. There agents, McCulloch and Lew. Evans knew of *their* being done.

Int'y 8th. If you know of any conspiracy, combination, or agreement upon the part of yourselves or either of you, or on the part of said John Dawson, or on the part of the City National Bank of Ft. Worth, or of any officer, attorney, or agent of any of them to cheat, mislead, deceive, or defraud the pl'ffs or either of them or any agent or attorney of theirs in regard to the making of any contract, agreement, sale, settlement, — compromise between said parties or any of them, and particularly if any such thing occurred in the city of Ft. Worth pending negotiations between said parties, you will please state what it was fully and in detail. Did or did not any such thing take place within your knowledge?

Answer of Oneal. No such thing occurred. Dawson offered more for the cattle at my ranche than they were willing to give delivered at Pilot Point. They would not take them at my ranche,
528 and that is all the reason I know of why Dawson got them. There was no deception, fraud, or misrepresentations whatever that I know of.

Answer of Kearby. I know of no conspiracy or combination to cheat, swindle, or defraud pl'ffs by Dawson or the City National Bank or Oneal or any of their attorneys, at Ft. Worth or elsewhere, and if any such thing ever occurred I know nothing about it.

Answer of Lillard. Not to my knowledge.

Answer of Allen. I don't know.

Int'y 9th. Where you present at or near Will's Point when a delivery of cattle was made by said John Oneal to def't, Jno. Dawson, in May, 1880, &, if you were, state the circumstances of such delivery? State what was delivered, the purpose of such delivery, whether pl'ffs or their attorneys or agents had knowledge of such delivery, and how you know they had, & whether they assented or objected to it, & state if they knew, at & before such delivery, whether said John Oneal disputed any portion of pl'ffs' demand against him, & what portion.

529 Answer of Oneal. I was there and turned over the cattle; I counted them out to Dawson myself; the number of cattle is shown by the bill of sale. They were delivered under the contract made in Ft. Worth, on March 20th, 1880. The delivery was made while pl'ffs' agent, Gen. McCulloch, who also represented the bank, & Lew. Evans, who said he represented pl'ffs, were present, and with their knowledge and consent. I know they knew it, because I was there. J. B. F. Sampsel, pl'ffs' agent, was also there while the delivery was going on. He knew I was disputing the matters of the Wm. Hunter's drafts, the New York shipment, and the items of interest.

Answer of Kearby. I was in Will's Point on the day & date the cattle were delivered to Gen. McCulloch, who was the agent of pl'ffs & the City National Bank, and to Jno. Dawson. I don't now remember how many cattle were delivered. I don't know their value, and the purpose of the delivery, I suppose, was to enable Oneal to pay a debt of Hunter, Evans & Co. & the City National Bank, col-

lect one —, and, on Dawson's part, to make some money out
530 of the cattle if he could. A man claiming to be pl'ffs' agent, named Evans, was present, and their attorney, Judge Watts, was present, and did have knowledge of what was going on and of the delivery of the cattle; and when the cattle were delivered and their value ascertained Judge A. T. Watts, Rob't McCart, and myself met, &, with their knowledge and consent, Jno. Dawson executed his obligation accordingly to the contract, "Exhibit C," which was turned over to the pl'ffs & City National Bank, and pl'ffs assented to all this. They did know, at and before the delivery and as early as March 20th, 1880, that Oneal disputed a large portion of their account, and their attorney, Judge Watts, was furnished with a statement of the items in their account disputed.

Answer of Lillard. I was not at the pens when the delivery was made; I cannot say.

Answer of Allen. I was; the delivery was to satisfy Oneal's indebtedness. He sold the cattle to Dawson; the number of cattle were delivered; I cannot state how many. Pl'ffs' agent, McCulloch, and Lew. Evans were present, had knowledge of it, and assented to it. Evans knew that Oneal disputed portion of
531 pl'ffs' claim; I don't know what portion of it.

Int'y 10th. Did Jno. Oneal deliver to said John Dawson all the cattle he then owned at that time; and, if not, how many, of what value, and in what brands did he have over or remaining, & did he make any offer to deliver more; &, if so, what was the offer & to whom made. Was it accepted; if not, why not? What did Dawson do with the cattle delivered to him. What else could he have done with them consistently with his known object in buying them? What, if anything, did he do in the way of paying or securing the price agreed on for their purchase? Did pl'ffs receive any money or other thing on account of such purchase; &, if so, state what and the circumstances of the same?

Answer of Oneal. I did not deliver all the cattle I had; I delivered all I could gather. I don't know how many I had left; the sheriff's writ of sequestration will show. I had some branded, as appears by bill of sale, to John Nichols, of the City National Bank of Fort Worth. I offered to gather up about 400 head more if he would wait; but Dawson said he could not wait. He had to go
532 to the nation by a certain time to deliver on an Indian contract. Dawson drove off the cattle delivered to him except the cows & calves; these he sold to Frank Houston at my ranche. He paid what he got from Houston according to contract, I was informed. I don't see what else he could have done; I don't see except what he did do. I don't know what he did about paying or securing except that they, the pl'ffs and the City National Bank, receipted me at the time he got the cattle for the price of them, and they had an agent along with Dawson to receive the money when the cattle were sold. I cannot state whether pl'ffs received the money or not. I was told that they received the money for the cows & calves sold Frank Houston & *a* 104 head of cattle sold afterwards. Attorneys had charge of the negotiations and transactions testified to by me,

and all the business was conducted by him for me, by Watts for the pl'ffs, Robt' McCart, Esq., for the bank, except the handling & delivery of the cattle. This was done by me and Dawson & Gen. McCulloch & Lew. Evans & Sampsel & the sheriff; with the latter I had no part.

Answer of Kearby. I understood from Oneal that he had
533 not gathered all his cattle from want of time. I do not know how many remained on the range or their value. My recollection is that Oneal said if they would wait a few days longer he would gather more cattle, but the expence in holding those already gathered was too great for them to wait. I don't know of my own knowledge of pl'ffs receiving any portion of purchase-money.

Answer of Lillard. I don't know.

Answer of Allen. I don't know. Dawson drove the cattle off. I think that was all he could do. I don't know what was done about paying or securing.

Int'y 11th. State what you know in regard to negotiations between pl'ffs & said John Oneal pending at the time of such delivery to John Dawson or afterwards in regard to settling or adjusting or securing any disputed matter of account between them, and if the same was settled or failed to be settled please state fully why that was, and you will please examine pl'ffs' amended bill and state what is the truth as to the matters and things therein alleged to have occurred between said Oneal and his attorney and agents and
534 pl'ffs and their attorneys and agents.

Answer of Oneal. Negotiations were pending at the time about settling the disputed items of account & had been pending some time. It was agreed in the contract between me, Hunter, Evans & Co., and the bank that after the claim of the bank and the undisputed part of Hunter, Evans & Co.'s account were paid the disputed items should be settled, by suit or arbitration, and secured by me on other property if there should not be enough over of the proceeds of the cattle after paying the bank & the undisputed part of Hunter, Evans & Co.'s account. These disputed items were not settled, because after agreeing to arbitrate the matter & selecting men to arbitrate they withdrew and refused to arbitrate. I have examined said amended bill. The allegations in said bill of representations made by me, which were untrue, are false allegations. I made no misrepresentations, and none were made by my authority or in my presence or with my knowledge by any agent or attorney of mine. All the statements of facts made by me or by my authority or in my presence by any agent or attorney are embodied in the written contracts & were and are true as set out in said contracts.

535 Answer of Kearby. Between the time the agreement at Fort Worth was made for delivery of the cattle and the time of delivery to Dawson, Oneal's book-keeper, Jimmie Swain, came to Dallas with Oneal's books and papers for the purpose of making a settlement of disputed items with the authorized representative of Hunter, Evans & Co. No settlement was made, and I only know the reason of such failure from what Swain told me, and that is all I know that was done or said about settling the matter between the

agreement and delivery. Hunter, Evans & Co. agreed to have a man at Dallas with their statement to meet Jimmie Swain, Oneal's book-keeper. If they had such man here and he met Swain I am not aware of it. Pl'ffs' agents and attorneys were informed at Ft. Worth, at the time of the making the agreements referred to, that the items *that* were contested, and it was agreed that those items when ascertained by suit, arbitration, or otherwise should be secured as heretofore stated and as shown by exhibits made a part of my answer. This settlement of disputed items was not had, because pl'ffs would not agree with us upon the arbitrators. After the time of the delivery of the cattle and on the same day
536 the matter of selecting arbitrators was discussed, and pl'ffs chose their man and Oneal his man, and we appointed a time thereafter to meet and arbitrate at Will's Point. We did meet & pl'ffs refuse- to abide by the selection made by them at the former meeting, and said they wanted to select a man from Dallas or elsewhere than Will's Point to arbitrate for them. I thereupon give them a list of names from 12 to 14 citizens of Dallas of whom we would be willing to accept any one. I don't remember all the names; among them was Capt. W. H. Gaston & G. M. Swink & others not now remembered. I furnished them a list & gave it to Judge Watts. So far as I know personally there is very little, if any, of truth in pl'ffs' amended bill, except as I have heretofore stated and as I will hereafter state.

Answer of Lillard. I don't know.

Answer of Allen. I don't know.

Int'y 12th. Since pl'ff- instituted this suit have they caused any of the property of John Oneal to be taken or seized by writ of sequestration or otherwise, & if they have caused the seizure of any stock state how, by whom and when, and the value per head
537 of such stock, & state what has been done with the same, and give your estimate of the loss or damage occasioned said Oneal thereby and your reasons for such estimate, and if the actions of pl'ffs in connection with the premises have caused or occasioned other damage to said Oneal state what it was and your estimate of the amount of such damage.

Answer of Oneal. They have; there was issued from the district court of Montague county a writ of sequestration to the sheriff of Van Zandt county, & he levied on cattle of John Oneal's; the number will appear by his return. They were worth on an average of $15.00 a head, with the exception of the calves; they were worth about $7.00 per head. He valued the whole at $10.00 a head. He would not let me grade them or have anything to do with them. They were taken off by Sampsel, with the exception of 10 milk cows & calves I gave bond for. This was June 28th, 1880, that I received a notice of levy. I don't recollect the date when they shipped the cattle away. I was injured at least $3,000 in the way they handled the cattle, and was injured in the use of my
538 ranche and damage to my credit at least $2,000 more. My reason for my estimate as to handling the cattle is that I could have realized $3,000.00 more by a sale if they had been handled

and sold by me than was realized. I had credit before & this deprived me of it. It was of value in my business to me, and by its loss I was damaged at least $2,000.00.

Answer of Kearby. I don't know anything of this personally. I have seen the sheriff of Van Zandt county in possession of cattle claimed by Oneal which the sheriff said he had taken by virtue of the supplemental writ of sequestration in the district court of Montague county.

Answer of Lillard. I know some cattle of his were seized by the sheriff of Van Zandt county in the spring of 1880, in May or June; don't know how many or the value. I don't know what was done with them; they rendered him no statement of them. I do not know the amount of damage done to Oneal.

Answer of Allen. They have. They were taken by the sheriff of Van Zandt county by writ of sequestration in June or July, 1880.
They were worth $15.00 a head. I don't know what was done
539 with them. I can't estimate his damage, though I know he was damaged.

Int'y 13th. If you were present at Ft. Worth about the 20th of March, 1880, when agreements between pl'ffs & def'ts were entered into, *if so*, state what conversations were had between any of the defendants or their attorneys or agents and pl'ffs or their attorneys or agents, and particularly what representations were made about the number of the O N brand of cattle or about the number of cattle other than the O N brand, including the bank's lien, given by def't Oneal. Did you see A. T. Watts there? What was he doing? What did he say? What was said in his presence by def't or agents?

Answer of Oneal. I was present at the time. As to conversation as to number of cattle, I stated that they never had been gathered and I did not know the number; that I thought there were between 2,500 & 3,000, and, not knowing the number, the provision was made in the contract for securing the disputed items of pl'ffs' account with
me upon other property if the price of the cattle should not
540 prove enough to pay the bank and pl'ffs' account. This is all the conversation had to my knowledge, except matters that I set out in the contract fully. If there was any combination or conspiracy I know nothing about it. I saw A. T. Watts there; he was in the negotiation as attorney for pl'ffs, and as such signed and witnessed the papers, as appears on both the contracts between Oneal & Dawson & John Dawson, Hunter, Evans & Co., and the City National Bank.

Answer of Kearby. I was present at the meeting at Ft. Worth when the agreements inquired of were signed. I cannot undertake to state all that was said. I do not now recollect the number of cattle Oneal represented that he had, but I think he stated that he believed that he had cattle enough to pay both of them. I remember that Mr McCart and Mr. Britton both claimed that their mortgage was superior because of defective acknowledgement or defective record of Hunter, Evans & Co.'s mortgage or bill of sale. I remember, to-, that they, McCart and Britton, claimed that their mortgage

covered cattle that were not embraced in Hunter, Evans & Co.'s bill of sale, but in that controversy Oneal and myself had no part
541 or parcel. That only involved a priority of liens and Oneal wanted to pay both of them. A. T. Watts was there and he was there representing Hunter, Evans & Co., and I have stated, as near as I remember, what was stated in his presence.

Answer of Lillard. I was not present. I don't know.

Answer of Allen. I was not present.

Int'y 14th. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause or either of them or that may be material to the subject of *the* your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer of Oneal. Jerome Kearby is my attorney; had charge of the negotiations and transactions testified to by me, and all the business was conducted by him for me, by Watts for the pl'ffs, and Rob't McCart, Esq., for the bank, except the handling & delivery of the cattle. This was done by me and Dawson and Gen. McCulloch & Lew. Evans & Sampsel and the sheriff. With the latter I had no part.

Answer of Kearby. I have answered fully.

Answer of Lillard. All cattle sold by pl'ffs for Oneal in the —
542 1879 was sold from ½ cent to a cent lower than the market quotations as published in the St. Louis Republican market report. I attach as exhibit to my deposition statements of account of City National Bank of Ft. Worth, referred to in my answer to interrogatory 3rd; statement for Aug., 1879, marked Exhibit B "1;" statement for Sept., marked Exhibit B "2." I also attach all the account of sales rendered by pl'ffs to Oneal for Sept., 1879, marked Exhibits C 1, C 2, C 3, C 4, C 5, C 6, C 7, C 8, C 9, C 10, C 11, C 12, & C 13. I also attach as exhibits hereto receipt received from Hunter, Evans & Co., pl'ffs, by Oneal for 280 cattle, Sept. 11th, 1879, marked Exhibit "D," which shows that the 120 out of that lot were not sent to New York as claimed, the account of sale showing that the 280 head were sold in St. Louis on Sept. 12th, 1879, and Oneal credited with proceeds of the 280. The cattle shipped to New York are of some other lot and not accounted for. I also attach hereto as an exhibit a general statement of account between pl'ffs and defendant Oneal made by me from the books of Oneal, marked Exhibit "E." Said statement of account is correctly made from said books and is correct.

Answer of Allen. At the time John Dawson purchased the
543 cattle from John A. Oneal I was cattle and hide inspector of Van Zandt county and made inspection officially of the said cattle, and delivered to John Dawson the inspection list or certificate of inspection, duly signed and authenticated by me, of which I hereto attach a certified copy, marked Exhibit "A," and made a part of my answer hereto.

Cross-interrogatories:

Cross-int'y 1st. How much was Oneal actually indebted to complainants, at the time the notes sued on were executed? Did not Oneal and complainants have a settlement at the time the said notes were executed and delivered—that is, did or not the parties agree as to the amount then due by Oneal to complainants, and were not the notes executed for the amount then estimated to be owing by Oneal to complainants? If not, then were not the notes executed for the amount then estimated to be owing by Oneal to complainants and for an amount or amounts thereafter to be advanced by complainants to him or his order?

Answer of Oneal. I cannot tell without seeing the accounts. We did not have a settlement; nothing was said about a settlement. The parties did not agree as to amount due by Oneal to pl'ffs and the notes were not executed for an amount estimated to be owing
544 by Oneal to complainants; they were for what was due and for advances to be made by them for me.

Answer of Kearby. I know nothing about the matter inquired about in cross-int'y 1st.

Answer of Lillard. I don't know.

Answer of Allen. I don't know.

Cross-int'y 1½. Did not you, John Oneal, with your own hand, write complainants on Feb'y 2nd, 1880, from Will's Point that, according to your books, you owed them, complainants, sixteen thousand & three hundred dollars, and do you, J. C. Kearby, know anything whatever, of your knowledge, of the state of accounts between said parties?

Answer of Oneal. I do not recollect any such letter. I never thoroughly examined my books with regard to the account until they insisted on having a deed of trust with power of sale in 15 days to secure the debt they claimed. I then had J. M. Lillard examine my books thoroughly, and, according to the books, instead of me owing them $16,000 they owed me near that amount.

Answer of Kearby. I know nothing, of my own knowledge.
545 Cross-int'y 2nd. Is it not true that the items you object to and claim to be unjust in complainants' statement of account consists in part of certain drafts drawn by Wm. Hunter for you on the complainants, and is it not true that you, Oneal, received the proceeds of these drafts—that is, were not the amounts placed to your credit at the bank in Ft. Worth and applied to the payment of cattle purchased by Oneal from other parties, and is it not also true that Oneal wrote to Wm. Hunter asking him to protect Oneal in paying for such cattle? As to the cattle shipped by complainants to New York for Oneal, did he or not authorize said shipment—that is, did he or not write a letter to the complainants authorizing the shipment? You will examine the account and then state whether or not Oneal is therein credited with the amount received by complainants from the New York shipment.

Answer of Oneal. It is. I cannot tell whether I received the proceeds or not. I have been hunting for it, and I cannot find where

it went. My book-keeper, Jno. M. Lillard, has been hunting for it about a year, and he cannot find it, as shown by his statement of account now on file between me and Hunter, Evans & Co. It may have been placed to my credit in Ft. Worth, but I have not found it, except the $2,500, as stated in my answer to direct inter-
546 rogatory. I have no knowledge of having so written Hunter. The $2,500.00 referred to—Hunter told me he had drawn it when I came back from my trip West. He said he did not know whether he has done right. I had it charged up and told him not to do so any more; I could run my own business. I did not write authorizing the shipment to New York of the cattle that were shipped there, but I wrote to them after they had shipped them to ship anywhere rather than sell in St. Louis or give to canning company. I did not want any more canning in mine. I wish they would produce said letter. I have examined the account. I cannot find that I am credited with anything for them, but am charged with a loss on them. They wrote me that they had weighed up the cattle at 2.85 or 2.95, as shown by letter in the hands of counsel.

Answer of Kearby. I know nothing about the matter in 2nd cross-int'y.

Answer of Lillard. All I know of this matter is answered in my answer to direct interrogatory.

Answer of Allen. I don't know.

Cross-int'y 3rd. Did you or not have a conversation with complainant, A. G. Evans, in Feb., 1880, in the office of A. T. Watts, city of Dallas, in reference to said statement of account; did
547 you or *or* not then and there state in presence of said Evans & Watts that about $16,000 of said account was correct? If not, then state all and everything that was said by you or either of you in said conversation, to whom, and who was present. Is it not true that you then only objected to the loss on the New York shipment and the interests charged in the account and some small items paid to shippers; and did you not then and there state that, excepting this item, the balance of the account was correct?

Answer of Oneal. I don't remember any such conversation in A. T. Watts' office. If it happened I know nothing of it.

Answer of Kearby. I know nothing of matter in this cross-interrogatory.

Answer of Lillard. I have answered all I know about it in answer to direct interrogatories.

Answer of Allen. I know nothing of this.

Cross-int'y 4th. What became of the cattle and horses owned by Oneal in March, April, & May, 1880; where such stock now is? And, if Oneal has sold the same, state when, where, to whom, giving the marks and brands of such stock so sold and the value of each animal and what price he received for same and from *home.*
548 Is it not true that Oneal's property was then all covered by deeds of trusts and mortgages securing his indebtedness in a much greater amount than his whole property was worth; and is it not true that all of his property, real and personal, has since the 1st of June, 1880, been sold under such deeds of trust and mort-

gages, and is it not true that it failed to pay off his indebtedness; and is it not true that Oneal is now insolvent, and has he not been insolvent since the fall of 1869?

Answer of Oneal. The cattle I sold to John Dawson, except what the sheriff got on the sequestration from Montague county district court, referred to in my direct answers, and what few were scattered over the country. The horses I have yet, and I expect to keep them. Part of the horses are in Van Zandt county and part in Shackelford county. I have sold no O N cattle except those sold Dawson, and have bought and sold 15,000 cattle since at different times and places and to different persons—I cannot give names or dates—most of them in the T brand, and the ⌐ on left side, and other marks and brands. I received various prices and paid various prices. Oneal's property was not then covered by deeds of trust and mortgages securing my indebtedness for more than my whole property
549 was worth. It has not. It is not. I don't think he is. He has not been insolvent since the fall of 1869.

Answer of Kearby. I don't know anything about his cattle and horses, or what disposition he has made of them, of my own knowledge. I know that at the time of settlement at Will's Point Oneal's property was incumbered by trust deeds to secure some mercantile debts, but to what extent or how much the property was incumbered I cannot now state, but I think the property was worth more than the incumbrance. These mortgages were in addition to the mortgages claimed by Hunter, Evans & Co. and by the City National Bank. I don't know whether property has been sold to pay his debts or not, and, if sold, I don't know whether he paid his debts or not. I only know that Oneal a short time ago claimed to be the owner of the property embraced in the trust deeds. I don't know whether he is solvent. He claims to be solvent and is so reputed in that section of country where he lives.

Answer of Lillard. I don't know.

Answer of Allen. I don't know.

Cross-int'y 5th. Who was present at the time the agreements were executed at Fort Worth in March, 1880? State who represented
550 Oneal, who the bank, & who complainants in that matter as attorneys-at-law? Who, as agent, represented complainants in that matter? Was or was not Oneal present at that time? Did not Jerome C. Kearby then and there represent Oneal as attorney-at-law? Did not Rob't McCart, as such attorney, represent the bank and also John Dawson? Was not Mr. Britton also present as an officer of the bank, and was not John Dawson also present in person. Was not Wm. Hunter there as the agent and A. T. Watts as the attorney of the pl'ffs at the time such agreements were made and executed? Is it not true that when said A. T. Watts arrived in Ft. Worth that the negotiations had been pending between the other parties for a day or two? What day of the week and what hour in the day did said Watts arrive at Fort Worth on that occasion? Is it or not true that when said Watts was informed of the terms of the proposed settlement or compromise that he then and there advised

Wm. Hunter not to accept or become a party to the same? If said Watts afterwards withdrew that advice, state why he did so.

Answer of Oneal. I was there and Jerome C. Kerby was there as my attorney. John Dawson was there, but I don't recollect
551 that he was in the negotiations until they were being closed up. I don't know whether Rob't McCart was acting as his attorney or not. Mr. Britton was there for the bank and Rob't McCart was there as attorney for the bank; Wm. Hunter was there representing claimants, and A. T. Watts was there as his attorney. Hunter would not do anything until A. T. Watts, his attorney, got there. Watts got there about 3 p. m.—that was about the time. On the day the contracts were signed if Watts made any objection to the proposed settlement I heard nothing of it and knew nothing of it. I know nothing about what he advised Wm. Hunter. I know of no objections that Watts put up to it or of his withdrawing it.

Answer of Kearby. There were present: Oneal, represented by me, myself, the City National Bank's vice-president, Britton, & Rob't McCart, the said bank's attorney, and Wm. Hunter, representing the pl'ffs, and their attorney, A. T. Watts, and John Dawson was also present part of the time. My impression is that the negotiations were commenced and completed in one day; that about the first thing said when we met after the object of our conference was explained was that Mr. Wm. Hunter wanted pl'ffs' attorney, Judge Watts, present, and said he would not do anything until he, Watts, got there. Watts was telegraphed for, and arrived that after-
552 noon. I don't remember the day of the week—I did. Watts arrived in the early part of the afternoon. I do not know what advice Judge Watts gave Wm. Hunter. I don't know that Judge Watts advised Wm. Hunter not to sign it or that he changed his mind, or if he did change it why he did it. I know that we discussed the terms of the compromise and I know that there were mutual concessions made all around with greater or less importance.

Answer of Lillard. I don't know.

Answer of Allen. I don't know.

Cross-int'y 6th. Is it or not true that when Watts, as the legal adviser of complainants, advised Wm. Hunter not to enter into that compromise that Hunter refused to do so; then did not Oneal, Kearby, McCart, Dawson, and Britton withdraw from the room when the negotiations were pending and hold a private consultation among themselves; and afterwards did the- not return to the room and represent to said Hunter & Watts that there was very nearly or quite cattle enough in the other marks and brands besides the O N stock covered by the mortgages and deeds of trust of the bank to pay off and discharge Oneal's indebtedness to
553 the bank? Was that statement not then and there made and urged as a reason why complainants should enter the compromise? Was it not made by each of the following-named parties, in the presence of each other, and by each urged as a reason why complainants should enter into the agreements, to wit, Jno. Oneal, J. C. Kearby, Rob't McCart, and Britton? Now, is it not true that when these representations was so made and urged by said parties

that said A. T. Watts then advised Wm. Hunter that if these representations were true, then that complainants could not lose but very little by entering into the compromise agreements; and was it not upon this advice that Wm. Hunter signed the several writings?

Answer of Oneal. I know nothing about that. I have no recollection of Oneal, Kearby, McCart, Dawson, & Britton withdrawing from the room when the negotiations were pending and holding a private consultation among themselves. Everything was settled in the room where the negotiations were had. I had no private conversation with any one, except Jerome Kearby, my attorney. I know nothing about their returning and representing to Hunter & Watts that there was very nearly or quite cattle enough in the other marks and brands besides the O N stock covered by the mortgages and deeds of trust of the bank to pay and discharge
554 Oneal's indebtedness to the bank. As soon as Watts came the contracts were closed up in a very short while, and without objection from Watts, as far as I know. No such statement was made or urged that I know of; it was not made by any of said parties that I know of. I don't know what Watts advised Hunter, nor upon what advice Hunter signed the writings.

Answer of Kearby. It is not true that Oneal, Kearby, McCart, Dawson, & Britton withdrew from the room and held a private consultation among themselves about the matters involved in the compromise or any other matter. After Judge Watts arrived and a conference had been had by all of us together we then separated to meet at a particular place and time that evening in order that Judge Watts might confer with Wm. Hunter. I did not hear McCart, Dawson, or Britton make any statement to Judge Watts or Wm. Hunter that there were nearly or quite cattle enough in the other marks and brands besides the O N stock covered by the mortgages and deeds of trust of the bank to pay off and discharge Oneal's indebtedness to the bank, nor did I make such statement, nor did I hear Oneal make such statement. I heard Oneal say, and probably I repeated it, that he believed he had and could get cattle
555 enough to pay both debts; that if he could not, that he could and would secure them. Oneal & myself urged that there were cattle enough, we believed, to pay the bank and Hunter, Evans & Co., my statement being based upon what Oneal had told me. If such a statement was made by each of the parties enquired about I did not hear it. I know nothing about the advice upon which Wm. Hunter signed the several writings.

Answer of Lillard. I don't know.

Answer of Allen. I don't know.

Cross-int'y 7th. Did or not said A. T. Watts first advise said Wm. Hunter not to sign the agreements? Did he not subsequently and on the same day advise Hunter that he could sign them with safety? Then state fully (for you know) why he finally advised Hunter that he might sign the agreement.

Answer of Oneal. I don't know what he advised Hunter. I never heard any objection.

Answer of Kearby. I have answered this cross-interrogatory as fully as I know how.

Answer of Lillard. I don't know.

Answer of Allen. I don't know.

Cross-int'y 8th. Did not Oneal say to complainants, their
556 agents and attorneys, at all times, that Jerome C. Kearby was his agent and attorney with full power to settle, adjust, and determine the matter? Did he not tell them that he had placed the whole matter in Kearby's hands, and that whatever he did about the matter would be all right?

Answer of Oneal. Yes, yes.

Answer of Kearby. I don't know whether Oneal said it to pl'ffs' agent and attorney, but it is a fact that I was fully authorized & empowered to act for him as his agent and attorney, and if I was asked about it I told them so.

Answer of Lillard. I don't know.

Answer of Allen. I don't know.

Cross-int'y 9th. How many cattle did Oneal deliver to John Dawson at or near Will's Point, Van Zandt county, in May, 1880? Where was such cattle delivered to Dawson, and upon what day of the week and what time of the day? After the delivery of such cattle w-ere did Dawson go, and what did he do with such cattle before he returned in person to Will's Point? Is it not true that he drove such cattle out some distance from Will's Point and returned to that place late on Saturday to make and sign the papers
557 necessary in carrying out the Fort Worth agreements, and was he not in great haste to return to the herd, saying that he was uneasy about the cattle getting scattered, &c.?

Answer of Oneal. The bill of sale given by me to Dawson & recorded in Van Zandt county shows the number. They were delivered at Oneal's ranche, about two miles east of Will's Point; they were delivered in different lots, and on different days, so he could brand them. I cannot give dates; the bill of sale will show when it was completed. He drove them out about 3 miles west of Will's Point the first night after we had closed up our business, and he came back to Will's Point to close up his business with them. I had nothing to do with that; that was on Saturday. I don't know anything about his being in haste or saying he was uneasy about the cattle getting scattered. I went out to where he was Sunday morning and sold him three cow ponies.

Answer of J. C. Kearby. I don't remember the number of cattle delivered to Dawson. The delivery was made in the neighborhood of Will's Point. I do not now remember the day of the week. I think the delivery consumed pretty much the whole day. I don't know where Dawson went after the delivery, or what he did with the cattle, except what he said about it. I know he returned late in the afternoon to town and signed the paper. I don't remember about his haste or what he said.

558 Answer of Lillard. I know he drove the cattle out some distance from Will's Point and returned. As to other matters inquired about I don't know,

Answer of Allen. I don't know the number they were delivered at Oneal's ranche. I don't know the day or hour. I don't remember what Dawson did with them, or where he went before he returned to Will's Point. I know he drove them away, and came to Will's Point late on Saturday to sign the papers. He was uneasy and in haste to get back to them. He said he was afraid they would get scattered.

Cross-int'y 10th. Is it not true that when Dawson returned to Will's Point to sign the proper papers, that you then disputed about $9,000 of complainants' account? Did not A. T. Watts, as the attorney of complainants, then and there commence the preparation of a deed of trust from Oneal to secure said disputed amount, and when he called upon Jerome C. Kearby for a description of the property to insert in said trust deed that Kearby told him that it was impossible to give a description; that he would have to get it from the records at Canton, and that it could not be done before the following Monday? Was this not said and done in the presence of Dawson and before he had left Will's Point?

559 Answer of Oneal. I disputed their account, and always have. I don't recollect what was said then. I don't know whether Watts began a deed of trust or not. It was in Kerby's hands, and the lawyers did the talking. Kearby did not tell me what they were doing. I was sick at the time, and not in a condition to attend much to business, though I did attend to closing up with Dawson. Such talk as I had there outside I had with Kearby was with McCulloch. I don't know what was said between Kearby & Watts. Kearby had charge of the whole matter as my attorney.

Answer of Kearby. It is true that then and long prior thereto that Oneal disputed somewhere between 8,000 & 9,000 of pl'ffs' account. It is true that I stated to Judge Watts that Oneal said he did not have some of the original deeds to lands upon which we expected to give him deeds of trust, and would have to go to the records for such description, and they were at Canton 13 or 14 miles S. E. I don't remember who was present.

Answer of Lillard. I don't know.

Answer of Allen. I don't know.

Cross-int'y 11th. *What* it not understood and frequently
560 talked about by and between Oneal, Dawson, & the representatives of the bank that the matter was to be so managed that the bank was to get its money, whether complainants got anything or not, pending the compromise from the 1st of Febr'y, 1880, to the last of May, 1880? Did or not John Oneal tell John Dawson and the representatives of the bank or any of them that he wished or intended to beat complainants out of their debt because they had been watching him like he was a thief? Did not Oneal use such language or something of the like import during the time aforesaid to Dawson & the representatives of the bank or any of them; if not, when, where, to whom, & what *he* said about this matter; when & where did he first use such language to said parties; how often & to whom? Did not Dawson tell Oneal & Britton at Ft. Worth about March 20th, 1880, that he intended the bank should get its money whether Hun-

ter, Evans & Co. got theirs or not? Is this not the understanding between the bank, Oneal, and Dawson all the while?

Answer of Oneal. It was not. I did not tell Dawson & the bank's representatives that I wished or intended to beat complainants out of their debt. I did tell them all generally and Sampsel particularly that they had treated — like I was a thief, as they knew they
561 were; that they sent a man there pretending he wanted to find business just to watch me; this was Lew. Evans, a brother of Capt. Evans. I boarded him a long time for nothing; thought he was a gentleman. At the same time he had one James Hallibarton watching me to see what cattle I was killing for market. Dawson did not tell Oneal & Britton any such thing. This was not the understanding. The two contracts between Oneal, Hunter, Evans & Co., and the bank & Dawson, Hunter, Evans & Co. & the bank covers the whole ground and shows all the understanding there was, and the contract shows whether there was any fraud, as all were present and had a fair understanding about it.

Answer of Kearby. I never heard Oneal, Dawson, or the representatives of the bank say that the matter was to be so managed that the bank was to get its money whether complainants got any or not. I don't know that Oneal told Dawson and the representatives of the bank or any of them, pending the compromise from the first of Feb'y, 1880, to last of May, 1880, that he intended to beat complainants out of their debt because they had been watching him like he was a thief, nor did I hear language of like import. I did not hear Oneal tell Britton that — Ft. Worth about March 20th,
562 1880, that he intended that the bank should get its money whether Hunter, Evans & Co. got there or not. I know nothing of any such understanding between the bank, Oneal, & Dawson.

Answer of Lillard. I don't know.

Answer of Allen. I don't know.

Cross-int'y 12th. When Oneal, Kearby, McCart, & Britton retired from their room at Fort Worth, where Watts advised Hunter not to sign the agreements, state fully and particularly everything that was then and there said by each and all of said parties in the consultation that ensued before you retired to the room. Is it not true that you were all acting together in the matter, and did you fully and explicitly understand each other in everything?

Answer of Oneal. I know of no such consultation. I have no recollection of it. The contract shows the whole thing. There was no concert of action that I know of.

Answer of Kearby. I have answered that there was no such consultation. It is not true that we were all acting together for any purpose, except that I and Oneal were anxious to make a compromise, both with the bank and with Hunter, Evans & Co. The only time that I fully and explicitly understood the bank
563 or Hunter, Evans & Co. was after the agreement had been comsummated & its terms agreed upon.

Answer of Lillard. I don't know.

Answer of Allen. I don't know.

Cross-int'y 13th. When complainants & Oneal met at Will's Point to arbitrate the matter of dispute as to the amount of the account did not Watts, as the attorney of complainants, demand of Kirby, as Oneal's attorney & agent, security for the disputed amount? Did not Kearby then & there tell Watts that Oneal did not have the cattle that he said he had; that his other property was all covered by liens for much more than it was worth and much of his lands were in litigation, and that he had nothing with which to secure the amount? At the same time & place did Kearby not tell Watts that what few cattle Oneal had left after the delivery to Dawson that he had sold to the bank in payment of the ballance he owed it?

Answer of Oneal. I know nothing about this.

Answer of Kearby. Watts did demand of me security for the disputed amount, and I offered a description of some property
564 there upon a misunderstanding as to the terms of the trust deed he was to take from Oneal to secure this disputed amount— arose between us, Watts insisting that he should have a right to sell within a few days after the adjudication of it and I insisting that Oneal should have until the 1st of January by paying interest. All this occurred after plaintiffs refused to select a man to arbitrate under the terms of the agreement heretofore referred to in my direct answers. After we had failed to carry out the arbitration we then undertook to settle it by compromise. I made them some propositions to pay them a certain amount of money in full satisfaction of their claim. I did tell Watts that I did not believe that Oneal had as many cattle as he thought he had. I did tell Judge Watts that Oneal's property was encumbered by liens, but did not tell him that it was encumbered for more than it was worth. I did not tell him that he had nothing with which to secure the amount, but, on the contrary, told him that I was ready to carry out the Fort Worth agreement. I don't think that I told Watts that Oneal had sold the balance of his cattle to the bank, but did tell him that the bank was secured on a lot of horses somewhere in the West for their balance.

565 Answer of Lillard. I don't know.

Answer of Allen. I don't know.

Cross-int'y 14th. How many cattle were delivered to Dawson by Oneal? What number of them were in the O N mark & brand? How many of such cattle belonging to the O N stock not marked & branded in that mark & brand were delivered to Dawson?

Answer of Oneal. The bill of sale shows. I cannot recollect how many of them were in the O N brand; Dawson'- inspection tally will show; I don't know; the inspection was made.

Answer of Kearby. I don't know how many cattle were delivered nor their marks nor brands nor to what stock they belonged.

And further this deponent saith not.

Answer of Lillard. I don't dnow.

Answer of Allen. I don't know.

EXHIBIT "A" to deposition of Oneal.

(This document is already copied in this transcript on page 116.)

Exhibits "A" & "C" to deposition of J. C. Kearby are already copied in this transcri-t, "A" on page- 122 to 126 and "C" on page- 126 to 129 of this transcript.

565*a* EXHIBIT "B" to deposition of J. C. Kearby.

STATE OF TEXAS, *County of Tarrant:*

Whereas Hunter, Evans & Co., of St. Louis, Ills., and City National Bank of Fort Worth have each of them liens in writ*ten* upon certain cattle, the property of J. A. Oneal, to secure certain indebtedness from said Oneal to the said Hunter, Evans & Co. and the said City National Bank; and whereas the said John A. Oneal, the said Hunter, Evans & Co., and the said City National Bank have this day agreed in writing, bearing even date herewith, to sell said cattle to John Dawson at the prices herein mentioned; and whereas the said Hunter, Evans & Co. & the said City National Bank have agreed with the said John Dawson upon the time and place of payment for said cattle to the amount of their debt, or so much thereof as said cattle may bring, and also upon the manner & amount of security for said payment by said Dawson:

Now, therefore, I, John A. Oneal, of the county of Van Zandt & State of Texas, in consideration of the agreements aforesaid between the said Oneal, Hunter, Evans & Co., and the said City National Bank, in consideration of the agreement between the said Hunter, Evans & Co. and the said City National Bank and
565*b* the said John Dawson, both of which bear even date herewith and are made parts hereof, I, for the further consideration of obtaining a release & discharge of said indebtedness to said Hunter, Evans & Co. and said City National Bank, I have this day agreed to gather and deliver to the said John Dawson, at or near Will's Point, in Van Zandt county, my stock of cattle, consisting of cows, calves, yearlings, and two and three and four year olds and upwards, upon which said Hunter, Evans & Co. and said City National Bank have liens, together with such other of my cattle as I may want to put in said sale and as may be acceptable to said Dawson, at the following prices, to wit: Cows & young calves at the rate of thirteen dollars; yearlings at the rate of seven dollars per head; two-year-olds at the rate nine dollars and fifty cents per head, and dry cows at the rate of ten dollars and fifty cents per head, three-year-old steers at the rate of thirteen dollars per head; four-year-old steers and upwards at the rate of eighteen dollars per head.

It is understood and agreed and the said John Dawson binds himself to pay for said cattle at the foregoing rates in such way
565*c* and such manner as the said Hunter, Evans & Co. and the said City National Bank may require, and payable to them

to the extent of my indebtedness to said Hunter, Evans & Co. and said City National Bank, as shown per the agreement above referred to between the said Hunter, Evans & Co. and the said City National Bank and the said John Dawson; and it is further agreed that should the said cattle furnished and delivered by the said Oneal to said Dawson as aforesaid amount to more than the amount of my indebtedness to said Hunter, Evans & Co. and said City National Bank, then said Dawson, for such excess, hereby agrees to secure the said Oneal in the amount of such excess by giving therefor good and acceptable security, payable at such time, not longer than the 1st day of October, 1880, and at such places as may hereafter be agreed upon, with 12 per cent. interest per annum upon such excess from date until paid. It is further agreed that the said John Oneal shall deliver said cattle as aforesaid as the said John Dawson shall receive the same as aforesaid on or before the 20th day of May, 1880, and no calves to be counted in this sale born after the 15th day of May, 1880.

In testimony whereof we hereunto set our hands and scroll for seal this the 20th day of March, 1880.

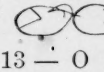
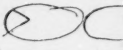
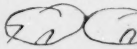
(Signed) JOHN A. ONEAL. [SEAL.]
" JOHN M. DAWSON. "

Attest:
ROB'T McCART.
A. T. WATTS.

566 EXHIBIT "A" to Allen's deposition.

THE STATE OF TEXAS, *County of Van Zandt:*

MAY 22ND, 1880.

This is to certify that I, A. B. Allen, inspector of hides and animals for the county of Van Zandt, have this day carefully examined and inspected for John Dawson the following cattle and find the same to be as the law requires, and that the said John Dawson, the purchaser thereof, has in all respects complied with the law of the State of Texas for the protection of stock-raisers; and, furthermore, that he has placed upon each animal on the left side a plain road brand, thus, ⊏, on 1,478 head of cattle; 148 head of cattle ⊐. I further certify that I have carefully examined all the bills of sale made to John Dawson and find them correct. The cattle are of the following description: 1,400 *hundred* head marked  , branded O N on left hip & side; 3 marked , 13 — O N; 24 marked  , branded O N & C W; 2 marked , branded S & O N; 1 marked  , branded 11 & O N, Oneal.

(See diagram marked 566, 567, 568.)

568 1,636 head of cattle, not including 61 unmarked and unbranded yearlings that are properly road-branded.

Given under my hand and official seal, at my office, in Will's Point, Texas, this 22 day of May, A. D. 1880.

A. B. ALLEN, *Inspector.*

Know all men by these presents that I, John A. Oneal, of Will's Point, Texas, have this day sold and delivered to John Dawson, of Ft. Worth, Texas, the above-described property for value rec'd.

May 22, '80.

JNO. A. ONEAL.

STATE OF TEXAS, *County of Van Zandt:*

Before me, A. B. Allen, inspector of hides and animals in and for the county of Van Zandt, in person appeared Jno. A. Oneal, to me well known to be the party whose name appears to the foregoing bill of sale, and acknowledged to have signed and executed the same for the purposes and considerations therein mentioned.

569 In testimony whereof I hereunto sign my name and affix my seal of office, in Will's Point, this 22nd day of May, A. D. 1880.

A. B. ALLEN,
Inspector of Hides and Animals for Van Zandt County, Texas.

THE STATE OF TEXAS, *County of Van Zandt:*

I, T. J. Foster, clerk county court, certify that the above is a true copy of inspector's report and bill of sale of Jno. A. Oneal to John Dawson, as found in record book of my office of marks and brands on pages 204, 205, & 206.

Witness my hand and official signature, with the seal of the county court of Van Zandt county in certification of the same, this 16th day of December, A. D. 1880.

[SEAL.]

T. J. FOSTER,
Clerk Co. C't Van Zandt Co, Texas.

(Endorsed:) Exhibit A to A. B. Allen's deposition. Certified copy of bill of sale & inspector's return.

570 EXHIBIT "A" to Deposition of Jno. M. Lillard.

336. Messrs O'Neal & Downing in acc't with Hunter, Evans & Co.

1879.		DR.	CR.
June 3.	To cash d'ft	325 00	
4.	By net pro. 24 cat.		213 50
	Balance		11 50
		325 00	325 00
July 1.	To balance	11 50	

E. & O. E.

HUNTER, EVANS & CO.,
FLATO.

EXHIBIT "B 1" to Deposition of Jno. M. Lillard.

Gen'l Jno. A. O'Neal, Will's Point, Texas, in account with City National Bank of Fort Worth, Texas.

Please examine & report at your earliest convenience.

1879. DR.

Aug. 14.	To bal.			2,547 34
	" checks	62 50		
	" "	30		
	" "	15		
	" "	35		
	" "	25		
	" "	50		
	" "	66 20		
	" "	35		
	" "	500		
	" "	56		
	" "	1,021		
	" "	2,000		
	" "	114		
	" "	2,587 50		
	" "	50		
	" "	300		
	" "	15		
	" "	100		
	" "	40 60		
	" "	100		
	" "	275		
	" "	149		
				7,626 80
	" interest			42 33
				10,216 47

CR.

Aug. 18.	By C. F.	2,487 50	
"	" "	2,487 50	
29.	" "	5,233 54	
			10,208 54
	Balance		7 93
			10,216 47

1879. DR.

Aug. 30.	To balance	7 93

571 EXHIBIT "B 2" to Deposition of Jno. M. Lillard.

John A. O'Neal, Esq., in account with City National Bank of Fort Worth, Texas.

Please examine & report at your earliest convenience.

DR.

1879.					
To checks				42 33	
"	"			35 55	
"	"			400	
"	"			2,000	
"	"			53	
"	"			500	
"	"			95	
"	"			114	
"	"			192	
"	"			500	
"	"			765	
"	"			24	
"	"			4,230	
"	"			7,000	
"	"			50	
"	"			13 40	
"	"			2 40	
"	"			1 44	
"	"			15	
"	"			50	
"	"			50	
"	"			150	
"	"			125	
"	"			88	
"	"			100	
"	"			1,380	
"	"			70	
"	"			27	
"	"			35	
"	"			13 56	
"	"			50	
"	"			150	
"	"			50	
"	"			25	
"	"			200	
"	"			18 30	
"	"			307	
					18,921 98
					18,921 98

1879.		Cr.		
	By bal.		34 40	
Sept. 3.	By C. F.		4,213 20	
25.	" "		7,940	
				12,187 60
Oct. 1.	" bal.			6,734 38
				18,921 98

1879.		Dr.	
Oct. 1.	To bal.		6,734 38

572 EXHIBIT "C 1" to Deposition of Jno. M. Lillard.

Hunter, Evans and Co., live stock commission merchants.

EAST ST. LOUIS, ILL., *Sept. 1st*, 1879.

No. 7281.

Account Sales of 201 *Cattle Sold for Account of Jno. A. O'Neal, Fort Worth, Texas.*

Cattle.	Hogs.	Sheep.	Weight.	Dock.	Price.	Amount.	Total.
121			115,860		2⅝	3,041 32	
80			77,400		2¾	2,128 50	
							5,169 82
Freight & back charges						1,100	
Yardage						50 25	
Hay, 2,000 lb						25	
Corn							
Commission						100 50	
							1,275 75
Net proceeds							3,894 07

E. & O. E.

HUNTER, EVANS & CO.,
Per SOUTHWORTH.

EXHIBIT "C 2" to Deposition of Jno. M. Lillard.

Hunter, Evans and Co., live stock commission merchants.

EAST ST. LOUIS, ILL., *Sept.* 1, 1879.

No. 7281.

Account Sales of 201 *Cattle Sold for Account of Jno. A. O'Neal, Ft. Worth, Texas.*

Cattle.	Hogs.	Sheep.	Weight.	Dock.	Price.	Amount.	Total.
121			115,860		2⅝	3,041 32	
80			77,400		2¾	2,128 50	
							5,169 82
Freight & back charges						1,100	
Yardage						50 25	
Hay, 2,000 lb						25	
Corn							
Commission						100 50	
							1,275 75
Net proceeds							3,894 07

E. & O. E.

HUNTER, EVANS & CO.,
Per SOUTH.

EXHIBIT "C 3" to Deposition of Jno. M. Lillard.

Hunter, Evans and Co. live stock commission merchants.

EAST ST. LOUIS, ILL., *Sept.* 2, 1879.

No. 7292–'93.

Account Sales of 264 *Cattle Sold for Account of Jno. A. O'Neal, Ft. Worth, Texas.*

Cattle.	Hogs.	Sheep.	Weight.	Dock.	Price.	Amount.	Total.
133			125,180		2 45	3,066 91	
131			121,580		2 40	2,917 92	
							5,984 83
Freight & back charges						1,430	
Yardage						66	
Hay, 2,400 lb						30	
Corn							
Commission						132	
							1,658
Net proceeds							4,326 83

E. & O. E.

HUNTER, EVANS & CO.,
Per SOUTHWORTH.

573 EXHIBIT "C 4" to Deposition of Jno. M. Lillard.

Hunter, Evans and Co., live stock commission merchants.

EAST ST. LOUIS, ILL., *Sept.* 2, 1879.

No. 7296.

Account Sales of 48 *Cattle Sold for Account of J. A. O'Neal, Ac. J. G. Moore.*

Cattle.	Hogs.	Sheep.	Weight.	Dock.	Price.	Amount.	Total.
45			35,700		2 15	767 55	
2			1,540		2 15	33 11	
1 crip. for						7 50	808 16
Freight & back charges						220	
Yardage						12	
Hay, 400 lb						5	
Corn							
Commission						24	261
Net proceeds							547 16

E. & O. E.

HUNTER, EVANS & CO.,
Per SOUTHWORTH.

EXHIBIT "C 5" to Deposition of Jno. M. Lillard.

(1 car.)

Hunter, Evans and Co., live stock commission merchants.

EAST ST. LOUIS, ILL., *Sept.* 2, 1879.

No. 7294.

Account Sales of 22 *Cattle Sold for Account of J. A. O'Neal and Co., Ft. Worth, Texas.*

Cattle.	Hogs.	Sheep.	Weight.	Dock.	Price.	Amount.	Total.
19			15,200		2 15	326 80	
3		(tails bobbed)	2,810		2 15	60 41	387 21
Freight & back charges						110	
Yardage						5 50	
Hay, 200 lb						2 50	
Corn							
Commission						11	129
Net proceeds							258 21

E. & O. E.

HUNTER, EVANS & CO.,
Per SOUTHWORTH.

EXHIBIT "C 6" to Deposition of Jno. M. Lillard.

Hunter, Evans & Co., live stock commission merchants.

EAST ST. LOUIS, ILL., *Sept.* 2, 1879.

No. 7292–'93.

Account Sales 264 *Cattle Sold for Account of Jno. A. O'Neal, Ft. Worth, Texas.*

Cattle.	Hogs.	Sheep.	Weight.	Dock.	Price.	Amount.	Total.
133			125,180		2 45	3,066 91	
131			121,580		2 40	2,917 92	
							5,984 83
Freight & back charges						1,430	
Yardage						66	
Hay, 2,400 lb						30	
Corn							
Commission						132	
							1,658
Net proceeds							4,326 83

Sent dup. of these 264 cat. & of the 201 cattle sold yesterday to Mr. O'Neal at Ft. Griffin, Shackelford Co., Texas, & have also telegraphed him the sales.

H., E. & CO.,
FLATO.

E. and O. E.

HUNTER, EVANS & CO.,
Per SOUTHWORTH.

574 EXHIBIT "C 7" to Deposition of Jno. M. Lillard.

Hunter, Evans and Co., live stock commission merchants.

EAST ST. LOUIS, ILL., *Sept.* 5, 1879.

No. 7320.

Account Sales of 23 — *Sold for Account of J. A. O'Neal, Will's Point, Texas.*

Cattle.	Hogs.	Sheep.	Weight.	Dock.	Price.	Amount.	Total.
23			18,670		2 20	410 74	
							410 74
Freight & back charges						110	
Yardage						5 75	
Hay, 200 lb						2 50	
Corn							
Commission						11 50	
							129 75
Net proceeds							280 99

E. and O. E.

HUNTER, EVANS & CO.,
Per FLATO.

EXHIBIT "C 8" to Deposition of Jno. M. Lillard.

Hunter, Evans and Co., live stock commission merchants.

EAST ST. LOUIS, ILL., *Sept.* 10, 1879.

No. 7347.

Account Sales of 46 *Cattle Sold for Account of Jno. A. O'Neal, Terrell, Texas.*

Cattle.	Hogs.	Sheep.	Weight.	Dock.	Price.	Amount.	Total.
22			20,380		2 60	529 88	
24			18,550		2 50	417 37	947 25
Freight & back charges						220	
Yardage						11 50	
Hay, 400 lb						5	
Corn							
Commission						23	259 50
Net proceeds							687 75

E. and O. E.

HUNTER, EVANS & CO.,
Per SOUTHWORTH.

EXHIBIT "C 9" to Deposition of Jno. M. Lillard.

Hunter, Evans and Co., live stock commission merchants.

EAST ST. LOUIS, ILL., *Sept.* 12, 1879.

No. 7368.

Account Sales of 292 *Cattle Sold for Account of Jno. A. O'Neal, Ft. Worth, Texas.*

Cattle.	Hogs.	Sheep.	Weight.	Dock.	Price.	Amount.	Total.
236			215,570		2½	5,389 25	
54			45,000		2¼	1,012 50	
2			2,620		1¾	45 85	6,447 60
Freight & back charges						1,540	
Yardage						73	
Hay, 2,800 lb						35	
Corn							
Commission						146	1,794
Net proceeds							4,653 60

E. and O. E.

HUNTER, EVANS & CO.,
Per SOUTHWORTH.

575 EXHIBIT "C 10" to Deposition of Jno. M. Lillard.

Hunter, Evans & Co., live stock commission merchants.

EAST ST. LOUIS, ILL., *Sept.* 12, 1879.

No. 7360. *Account Sales of* 280 *Cattle Sold for Account of Jno. A. O'Neal, Ft. Worth, Texas.*

Cattle.	Hogs.	Sheep.	Weight.	Dock.	Price.	Amount.	Total.
40			41,810		2 90	1,212 49	
20			18,880		2 65	500 32	
98			98,430		2 85	2,805 25	
2			2,170		2 85	61 84	
118			119,420		2 85	3,403 47	
2			2,000		2 65	53	
							8,036 37
Freight & back charges						1,540	
Yardage						70	
Hay, 5,600 lb						70	
Corn							
Commission						140	
							1,820 00
Net proceeds							6,216 37

E. and O. E.

HUNTER, EVANS & CO.,
Per SOUTHWORTH.

EXHIBIT "C 11" to Deposition of Jno. M. Lillard.

Hunter, Evans & Co., live stock commission merchants.

EAST ST. LOUIS, ILL., *Sept.* 16, 1879.

No. 7382. *Account Sales of* 253 *Cattle Sold for Account of J. A. O'Neal Ft. Worth, Texas.*

Cattle.	Hogs.	Sheep.	Weight.	Dock.	Price.	Amount.	Total.
45			41,710		2 60	1,084 46	
22			20,720		2 60	538 72	
22			20,580		2 60	535 08	
22			21,160		2 60	550 16	
1 crip. cow for.						7 00	
43			40,930		2 60	1,064 18	
66			61,490		2 60	1,598 74	
31			29,390		2 50	734 75	
1			640		2	12 80	
							6,125 89
Freight & back charges						1,320	
Yardage						63	
Hay, 2,400 lb						30	
Corn							
Commission						126	
							1,539
Net proceeds							4,586 89

E. and O. E.

HUNTER, EVANS & CO.,
Per SOUTHWORTH.

576 EXHIBIT "C 12" to Deposition of Jno. M. Lillard.

Hunter, Evans & Co., live stock commission merchants.

EAST ST. LOUIS, ILL., *Sept.* 24, 1879.

No. 7415.

Account Sale of 22 *Cattle Sold for Account of J. A. O'Neal, Will's Point, Texas.*

Cattle.	Hogs.	Sheep.	Weight.	Dock.	Price.	Amount.	Total.
20			15,540		2 30	357 42	
*2			1,750		2 80	49	
							406 42
Freight & back charges						110	
Yardage						5 50	
Hay, 200 lb						2 50	
Corn							
Commission						11	
							129
Net proceeds							277 42

*These are the 2 steers you wanted us to sell separate.
E. and O. E.

HUNTER, EVANS & CO.,
Per SOUTHWORTH.

EXHIBIT "C 13" to Deposition of Jno. M. Lillard.

Hunter, Evans & Co., live stock commission merchants.

EAST ST. LOUIS, ILL., *Sept.* 17, 1879.

No. 7381.

Account Sales of 308 *Cattle Sold for Account of O'Neal and Atkinson, Ft. Worth, Texas.*

Cattle.	Hogs.	Sheep.	Weight.	Dock.	Price.	Amount.	Total.
203			173,690		2 30	3,994 87	
105			88,830		2 30	2,043 09	
							6,037 96
Freight and back charges						1,540	
Yardage						77	
Hay, 5,600 lb						70	
Corn							
Commission						154	
							1,841
Net proceeds							4,196 96

E. and O. E.

HUNTER, EVANS & CO.,
Per SOUTHWORTH.

EXHIBIT "D" to Deposition of Jno. M. Lillard.

OFFICE OF HUNTER, EVANS AND CO.,
NATIONAL STOCK YARDS, ILL., *Sept. 11th*, 1879.

Received, via I. M. R. R., 14 cars, 280 head of cattle, for account of J. A. O'Neal—H. M. McMiller, shipper—in good order.

HUNTER, EVANS AND CO.,
Per FLATO.

577 EXHIBIT "E" to John M. Lillard's Deposit-.

Mess. Hunter, Evans & Co., East St. Louis, Mo., in ac. with John A. O'Neal, Will's Point, Texas.

DR.

1879.			
Feb'y	26.	Net pro. 56 cattle	1,730 19
"	"	Rebate on 3 cows	30 00
March	31.	Net pro. 21 cattle	644 50
Ap'l	9.	" " 38 "	1,155 90
"	"	" " 104 hogs	602 50
May	5.	Error in s. d.	03
	15.	Net proceeds 39 cattle	1,027 30
	26.	" " 43 "	756 35
	27.	" " 43 "	748 13
	28.	" " 23 "	428 08
	31.	" " 41 "	856 02
June	1.	Balance	24,589 36
			$32,568 38

CR.

Feb.	20.	Cash p'd my s. d.	1,500
M'ch	6.	" "	200
	30.	Acceptance due June 18, '79	3,141
	28.	Cash p'd my s. d.	1,000
Apr.	4.	" "	204 57
	8.	" "	1,300
	14.	Acceptance due June 1–4	3,659 85
	18.	" " May 3	2,525
May	6.	" " June 15–18	1,787 67
	9.	" " July 4–7	3,075 00
	10.	" " June 5–8	530
	13.	Cash p'd my s. d.	1,000
	13.	Acceptance due June 9–12	1,305 44
	14.	" " July 11–13	2,113 60
	15.	" " June 24–27	408 00
	21.	" " June 4–7	1,015
	21.	" " June 15–18	1,500
	23.	" " June 14–17	3,053 25
	26.	Cash p'd my s. d.	1,000
	27.	" "	750
	29.	" "	1,500
			$32,568 38

578 *Exhibit "E"*—Continued

DR.

1879.				
June	4.	Net pro. 42 cattle		743 84
"	9.	" 63 "		779 93
	11.	" 40 "		908 92
	12.	" 20 "		337 45
	12.	" 21 "		280 75
	"	" 20 "		489 37
		" 42 "		657
		" 20 "		397 60
		20 "		330 62
		110 "		1,843 36
June	17.	142		2,474 98
	"	140		2,763 32
	18.	63		190 23
	18.	19		397 45
	23.	78		1,421 77
	24.	44		725 78
	26.	63		1,155 11
	28.	169		3,585 12
	18.	Acceptance @ 40 days, less 35 days' int. on $10,000.00		9,908 34
	"	Acceptance @ 60 days, less 63 days' int. on $10,000.00		9,825 00
	18.	Acceptance @ 90 days, less 63 days' int. on $10,000.00		9,741 67
July	1.	Balance for'd		3,283 55
				$52,241 16

CR.

June	2.	Balance	24,589 36
"	9.	Exchange	1 55
"	10.	Acceptance due June 17, '79	4,171 11
"	10.	Cash by s. d.	4,135 46
"	11.	" "	700
"	14.	Exchange	5 00
"	17.	Cash by s. d.	3,213 96
"	24.	Wm. Hunter's draft, my ac.	2,500
"	"	Cash, my " " ---{ 900 / 1,150 }---	2,050 00
"	26.	" " "	1,000 00
"	27.	Acceptance due July 28, '79	2,708 02
"	"	Cash, my s. d.	2,681 48
"	28.	Acceptance due July 27-29	1,522 50
"	30.	Cash, my s. d.	1,800 00
"	12.	" "	1,162 72
			52,241 16

579 *Exhibit "E"*—Continued.

DR.

July	3.	Net pro. 60 cattle		1,324 98
		" " 155 "		2,563 41
		" " 21 "		325 95
		" " 129 "		2,374 21
	7.	" " 66 "		1,052 44
"	7.	" " 125 "		2,165 50
"	"	" " 155 "		2,531 18
	"	" " 45 "		680 99
"	10.	" " 88 "		1,380 59
"	11.	" " 75 "		970 00
	15.	" " 236 "		3,716 43
	18.	" " 24 "		246 78
	"	" " 147 "		2,373 24
	"	" " 88 "		1,539 77
	"	" " 221 "		3,192 89
	21.	" " 103 "		2,209 78
	24.	" " 85 "		990 87
	28.	Error in s. d. June 28th		3 00
	30.	Net pro. 45 cattle		597 00
	"	" " 105 "		1,682 30
	"	" " 128 "		2,150 02
	"	" " 64 "		1,059 50
		Balance		62 77
				35,193 60

CR.

July	1.	Balance br't for'd	3,283 55
"	3.	Acceptance due Aug 2nd	4,004 18
"	"	Cash, my s. d.	1,909 50
	5.	" " "	1,000 00
	7.	" " "	1,410 00
	"	" " "	100 90
	8.	O'Neal and Downing's ac	11 50
	"	Cash, my s. d.	1,015 00
	9.	" " "	2,500 00
	12.	" p'd Ullman	970 00
	"	Acceptance due June 18th	1,100 00
	14.	Cash, my s. d.	4,845 01
	15.	" " "	2,600 00
	"	" " "	3,340 46
	18.	" " "	520 00
	19.	" " "	361 00
	22.	" " "	2,739 00
	23.	" " "	50 00
	24.	" " "	200 00
	25.	" " "	886 50
	"	" " "	2,347 00
			35,193 60

580 *Exhibit "E"*—Continued.

DR.

Aug.	4.	Net pro. 342 cattle		4,915 51
	11.	" " 313 "		4,998 24
	"	" " 269 "		3,751 57
	12.	" " 41 "		715 72
	13.	" " 111 "		2,083 87
	19.	" " 44 "		746 32
"	20.	Note, $11,000, less disc., $131.40, due Oct. 2nd		10,868 60
	"	" 11,000, " " 192.50, " " 22		10,807 50
	21.	Net pro. 42 cattle		849 01
	"	" " 67 "		949 39
	25.	" " 24 "		263 25
	28.	" " 24 "		261 45
	"	" " 111 "		1,659 73
	29.	" " 26 "		124 15
	"	" " 24 "		257 15
	30.	Rebate on 227 cars, @ $10.00		2,270 00
				45,521 46

CR.

Aug.	1.	Balance	62 77
	5.	Paid for hauling cripples	1 00
	9.	Cash, my s. d.	1,005 00
"	"	Acceptance due Sept. 4th	7,000 00
	11.	Paid for hauling cripples	1 50
	18.	Cash, my s. d.	400 00
	19.	" " "	2,500 00
"	20.	My note, $10,000, & int., $50.00, ret'd	10,050 00
	"	" " 10,000	10,000 00
"	"	Cash paid s. d.	2,500 00
	28.	" " "	1,500 00
	29.	" " "	1,500 00
Sept.	1.	Balance for'd	9,001 19
			45,521 46

581

DR.

1879.			
Sept.	1.	Balance br't for'd	9,001 19
	"	Net pro. 201 cattle	3,894 09
	2.	" " 131 "	2,089 92
	"	" " 133 "	2,236 91
	"	" " 22 "	258 21
	"	" " 48 "	547 16
	5.	" " 23 "	280 99
	10.	" " 46 "	687 75
	12.	" " 280 "	6,216 37
	"	" " 292 "	4,653 60
	16.	" " 253 "	4,586 89

Exhibit E—Continued.

DR.

Sept.	17.	Cash N. Y. ex., pr. Wm. Hunter, 6,648, less disc., 6.64	6,641	36
	24.	Net pro. 22 cattle	277	42
			41,371	84

CR.

Sept.	1.	Cash paid McMiller, as per my letter	40	00
	2.	" my s. d.	5,259	70
	"	" "	1,774	95
	4.	" "	325	00
	5.	Acceptance due Sept. 10th	4,251	15
	16.	Paid for hauling cripples	1	50
	17.	Cash p'd Wm. Hunter's draft	6,701	24
	20.	My note due to-day	10,000	00
	29.	Cash p'd my s. d.	8,000	00
Oct.	1.	Balance	5,018	30
			41,371	84

582

DR.

1879.

Oct.	1.	Balance	5,018	30
	7.	Net pro. 400 cattle	7,848	52
	"	" 200 "	3,667	64
	9.	" 183 "	3,377	45
	10.	" 1 "	15	00
	13.	Paid Winham	1,126	97
	15.	Net pro. 340 cattle	5,945	70
	17.	" 164 "	3,156	31
	18.	" 183 "	1,525	03
	21.	" 175 "	3,640	83
	"	" 83 "	1,534	82
	"	" 41 "	942	35
	"	" 35 "	468	68
	22.	" 168 "	3,056	03
	"	" 16 "	236	52
	"	" 176 "	2,886	14
	"	" 67 "	1,386	20
	"	Rebate on 171 cars, @ $10.00	1,710	00
	"	Net pro. 1 cattle	11	00
	28.	" 70 "	1,099	22
	30.	" 48 "	662	75
	"	" 21 "	424	80
			49,740	26

Exhibit E—Continued.

CR.

Oct.	3.	Cash, my s. d.		277 42
	4.	Acceptance due Oct. 13th		7,113 14
	"	My note due this day		11,000 00
	13.	Cash, my s. d.		2,000 00
	18.	"		2,864 63
	21.	"	597.08 695.00 4,000.00	5,292 08
	23.	Paid for hauling cripples		1 50
	24.	" my note due this day		11,000 00
	"	Cash, my s. d.		500 00
	"	"		5,443 09
	28.	"		600 00
Nov.	1.	Balance for'd		3,648 40
				49,740 26

583

DR.

Nov.	1.	Balance br't for'd			3,648 40
"	5.	Net pro.	192	cattle	6,709 90
	7.	"	168	"	3,359 15
	"	"	189	"	3,633 67
	"	"	41	"	569 50
	"	"	45	"	613 43
"	10.	"	294	"	7,065 60
	"	"	108	"	1,753 55
	"	"	22	"	352 75
	11.	"	23	"	295 05
	17.	"	44	"	772 16
	19.	"	202	"	3,385 42
	"	"	200	"	3,606 41
	22.	"	46	"	654 50
"	25.	Relate on 102 cars, @ $10.00			1,020 00
	"	" comm. Transcont. R. R.			97 25
	28.	" " Terrell ship'ts			55 00
"	"	Cash p'd Wm. Hunter's ac. J. D. Reid			460 00
					38,051 74

CR.

Nov.	3.	Cash, Wm. Hunter's draft	7,359 75
"	"	" " "	7,359 75
"	4.	" " "	7,187 00
"	7.	" Fort Worth ch'g's, 14 cars, to St. Louis	1,597 50
"	10.	Acceptance due Nov. 14th	1,100 06
"	17.	Notary fees	25
Dec.	1.	Balance	13,447 43
			38,051 74

"*Exhibit E*"—Continued.

Dr.

Dec.	1.	Balance	13,447 43
"	"	I. M. R. R. damages collected	2,269 50
"	8.	Net pro. 46 cattle	579 30
"	"	Rebate on 2 cars	20 00
			16,316 23
1880.			
Jan.	1.	Balance my favor	16,316 23

E. & O. E.

JNO. A. ONEAL,
P'r LILLARD.

(Endorsed:) Final statement. Hunter, Evans & Co. in ac. with Jno. A. Oneal. Dr., 16,316.23.

584 *Deposition of H. E. McCulloch, Witness for Def'ts.*

Deposition of Henry E. McCulloch, a witness for defendants, taken before and sworn to before C. L. Arbuckle, clerk of the district court of Guadalupe county, Texas, on the 29th day of Sept. 1880.

Int'y 1st. Please state your name, age, residence, and occupation.

Answer. Henry E. McCulloch; sixty-four years old next December; Seguin, Guadalupe county, Texas; have no profession; raised a farmer, and claim that as my occupation.

Int'y 2nd. Are you acquainted with the parties to this suit or any of them; if so, which of them are you acquainted with?

Answer. I am acquainted with A. J. Evans and Mr. Buell, of Hunter, Evans & Co., and Mr. Nichols and Mr. Lomax, of the National Bank of Fort Worth; John A. Oneal, of Will's Point, and John Dawson, of Ft. Worth.

Int'y 3rd. We tender you and attach to this interrogatory copies of certain agreements, viz., a paper signed by John A. Oneal,
585 City National Bank of Ft. Worth, & Hunter, Evans & Co., marked Exhibit "A," and another paper signed by John M. Dawson, Hunter, Evans & Co., & City National Bank, marked Exhibit "B." Please examine said copies, and state whether or not you ever saw the originals thereof; and if you answer that you have before seen the originals thereof, then please state when and where and under what circumstances you first saw the original agreement between said parties; and if you had any connection with said cattle which were the subject-matter of said contract or agreements, then please state what connection you had with such cattle and how you came to have anything to do with said cattle.

Answer. I have examined the papers referred to and marked Exhibit- A and B attached to the interrogatorys and recognized them as copies, as well as I now remember, of original contract- which were shown me in the back room of the City National Bank

of Fort Worth, Texas, on the 14th of May, 1880, by some one
586 of the officers of the bank in order that I might fully understand their nature and application to a lot of cattle to which they referred which were to be placed under my control by the City National Bank of Ft. Worth and Hunter, Evans & Co., St. Louis, as their mutual agent. These cattle were afterwards placed in my hands as the agent of the bank & Hunter, Evans & Co., as their mutual agent, with instructions to accompany them to market and receive the proceeds of their sale when sold by their owner or purchaser, Mr. John Dawson, who was to have the holding and selling of the cattle.

Int'y 4th. If in answer to interrogatory 3rd you have stated that you was selected and agreed upon by Hunter, Evans & Co. and the City National Bank of Ft. Worth as their mutual agent to accompany the defendant Dawson in driving the cattle mentioned in Exhibit "B" and to receive the proceeds of the sale of the said cattle from Dawson, as stipulated in said agreement, then state who
587 was present representing the various parties at the time of your selection as such agent; and state particularly, if you have not already done so, what was said and done between the parties or their representatives at the time they selected you as their agent. Was or not the defendant Dawson present at the time? If there was any verbal instructions given you by Hunter, Evans & Co. or by the City National Bank or their representatives state what those instructions were.

Answer. When I was selected by Hunter, Evans & Co. and the City National Bank of Ft. Worth as their mutual agent, or rather when the contract was closed with me by them and I received my instructions with regard to my duties, Hunter, Evans & Co. were represented by Louis W. Evans and Judge Watts and, I think, Wm. Hunter, and the bank by Mr. Nichols, Mr. Lomax, and Mr. McCart. If Mr. Dawson was present I do not recollect it, but don't think he was. I was furnished with copies of the contract as attached to these interrogatories and verbally instructed to see that the
588 herd of cattle were kept together until sales were made by Mr. Dawson and to receive the proceeds of such *as* from him as he made them.

Int'y 5th. State whether or not you were present at or near the town of Will's Point on the 21 & 22 of May, 1880, at the time said cattle were received by the defendant, John M. Dawson.

Answer. I was in or at Will's Point on the 21 & 22 May, 1880, at the time and the time the cattle refer-ed to were received by John M. Dawson from J. A. Oneal, but was not at the pen when they were turned over to him—the cattle were.

Int'y 6th. If you have stated that you were present at the time the defendant Dawson received the cattle in controversy, then state, if you know, from whom he received said cattle and where he received said cattle; state whether or not Hunter, Evans & Co., pl'ffs, or any person acting for them, was present at the time def't Dawson received said cattle.

589 Answer. The cattle were received by J. M. Dawson from John A. Oneal some 2 or 3 miles S. E. of Will's Point, at Oneal's pens, and although L. W. Evans and myself (one or both of us) visited the herd and pens several times while the cattle were being gathered and branded neither of us was present at the time of final delivery to Dawson, and, as far as I know, there was no person representing Hunter, Evans & Co. present when the cattle was turned over to Dawson by Oneal.

Int'y 7th. If you have stated that Hunter, Evans & Co. were present, either in person or by agent, at the time def't Dawson received said cattle, then please state whether said cattle were received and taken charge of by said Dawson with or without the consent and approbation of said Hunter, Evans & Co. or their agents; state, in this connection, if you know, whether or not there was any bill of sale made to said cattle; and, if so, by whom and to whom was such bill of sale made.

Answer. I have stated that Hunter, Evans & Co. were not
590 present, either in person or by agent, when Oneal delivered the cattle to Dawson, but the cattle were taken charge of by Dawson with the knowledge and concent of L. W. Evans and Judge Watts, who were there representing Hunter, Evans and Co. The bill of sale was made by John A. Oneal to John M. Dawson to the cattle refe-red to.

Int'y 8th. State, if you know, whether or not any part of the cattle so delivered to Dawson were sold by him before he left Van Zandt county; and if you answer in the affirmative, then please state, if you know, the whole of the circumstances of such sale, to whom Dawson paid the proceeds of such sale; and if you answer that Dawson paid the money over to you as the agent of Hunter, Evans & Co. and the City National Bank, then state what you did with the money so received by you from said Dawson and how was the said money credited; and if you state what it was credited on Dawson's note for said cattle, then state who had charge of
591 Dawson's note and how came such person to have charge of Dawson's said note.

Answer. Dawson sold 263 cows before he moved the cattle from Oneal's pens to Mr. Houston for $3,419.00 (as he said) and gave a draft on Holt & Co., bankers, at Terrell, Texas, for that amount of money as the agent of Hunter, Evans & Co. and the City National Bank of Ft. Worth, by me, according to proposition agreed upon by their agent and attorneys, who were present at the time, and this amount of $3,419.00 was credited on Dawson's note for the cattle he received from Oneal; was written on the back of the note by Judge Watts, att'y for Hunter, Evans & Co., and signed by me as the agent of H., E. & Co. and the bank to whom the note was made payable and who had placed said note in my charge for collection as their mutual agent.

Int'y 9th. If you know anything concerning the division of the proceeds of the first sale of cattle by Dawson as between pl'ffs,
592 Hunter, Evans & Co. and the City National Bank of Ft. Worth, please state fully and particularly all you may know

about it, how you acted, and what was done by you and by and between your principals as to the proceeds of said first sale.

Answer. I divided the $3,419.00 between Hunter, Evans & Co. and the bank by paying Hunter, Evans & Co. 1,668.56 according to the *pro rata* agreed upon by the representatives of these parties, I having requested them to settle precisely among themselves what that *pro rata* should be, which they did by getting Capt. Owens or some one in his employment to calculate for them as a disinterested party.

Int'y 10th. State whether or not you, as agent of Hunter, Evans & Co. and the City National Bank of Ft. Worth, received any other money from said defendant Dawson in addition to the amount last spoken of, the proceeds of cattle sold by him out of said herd before they were levied on by the writ of sequestration in this case; if yea
593 to whom was said last-named money paid and how was the same credited and where & when did you so receive it?

Answer. After leaving Will's Point Dawson sold 100 beeves & 4 cows to Frank Houston for $2,060.00, out of which he agreed that I should receive 1,842.00 as the agent of H., E. & Co. & the bank. Houston did not pay cash for these cattle or that portion which I controlled, but gave me a draft on Mess. Mullhall and Scaling, of St. Louis, in favor of Hunter, Evans & Co., for $1,842.00, payable some thirty days after that time, and I entered a credit on Dawson's note in these words: Received on the within note a draft drawn by Frank Houston on Mulhall and Scaling for eighteen hundred and forty-two dollars, payable on the 22 of next month. May 25th, 1880, I received no money on this draft, but sent it to Hunter, Evans & Co., to whom it was made payable, and drew a draft on them in favor of the City National Bank of Ft. Worth for $939.88, which was their *pro rata* of said sale according to the *pro rata* agreed upon at Will's Point. This transaction took place at Houston's
594 ranch or farm, which I think is in the southern portion of Kaufman county, Texas, and on the 26th of May, 1880.

Int'y 11th. State whether or not you accompanied said Dawson when he left Van Zandt county with said cattle; if yea in what capacity and for what purpose did you so accompany him?

Ans. to 11 int'y. When Dawson left Van Zandt county with the cattle I accompanied him as the mutual agent of Hunter, Evans & Co. and the City National Bank of Ft. Worth to receive the money for which he might sell the cattle, and apply it to his credit on his note until the note was paid.

Int'y 12th. When did you and defendant Dawson leave Van Zandt county with said cattle, and what was the intended destination of said cattle?

Answer. Dawson started the cattle from Oneal's pens on the 22nd May, 1880; moved then some 6 or 7 miles that evening, and
595 on the 23rd drove several miles, and was *and was* near to the line of Van Zandt county, and we passed out of that county with the cattle on the 23 or 24 of May, 1880, intending to drive them to market at Caldwell, Kansas.

Int'y 13th. State whether or not any or all of the parties, viz., Hunter, Evans & Co., City National Bank, or their agents or attorneys or representatives, were present at the time said Dawson started off with said cattle.

Answer. The agents and attorneys of both Hunter, Evans & Co. and the City National Bank were at Will's Point the evening Dawson moved the cattle from Oneal's pens, which was regarded as the "start off with the cattle," and I think saw the cattle as they passed through Will's Point.

Int'y 14th. Were pl'ffs or their agents or attorneys aware of Dawson's intended destination at the time you and he left Van Zandt county with said cattle or not? If you answer in the affirmative, then please state if you know whether or not pl'ffs or their
596 said agents or attorneys consented and approved of said Dawson's actions in driving said cattle out of Van Zandt county or otherwise, and whether said Dawson and yourself started off with said cattle with the full knowledge, consent, and approbation of pl'ffs or otherwise. State fully the circumstances of your and Dawson's starting with said cattle, and as to whether the same was with or without the knowledge and consent of pl'ffs.

Answer. It was understood by all parties that Dawson intended when he left Will's Point to drive the cattle to market, Caldwell, Kansas, being the point designated as the objective point, and parties interested in the driving and sale of the cattle consented to and approved of Dawson's driving the cattle out of Van Zandt county with the view of taking them to the market, as above indicated, and Dawson and myself started off with the cattle with the consent of all parties as well as with their full knowledge of time of leaving and place of destination.

597 Int'y 15th. When and in what county were said cattle at the time they were seized under the writ of sequestration in this case? If you state that said cattle were in Montague county, state in whoes possession they were and what was being done with them at the time of said seizure if they were en route for any place. State to what place they were *in* rout- and for what purpose.

Answer. The cattle were in Montague county when they were seized under the writ of sequestration or attachment; were in the possession of John Dawson, and were being drove by him to market at Caldwell, Kansas, for sale.

Int'y 16th. Pl'ffs have averred in their affidavits for sequestration in this case that they, pl'ffs, feared defendants Dawson and Oneal would wast- said cattle and would remove the same out of Montague county. Please state in this connection how and in what manner said cattle were handled by said Dawson from the time the
598 same left Van Zandt county up to the time *up to the time* they were seized under the writ of sequestration in this cause, and state whether or not they were being driven through Montague county with the consent of pl'ffs or otherwise, if you know.

Answer. According to my judgment, the cattle were very well handled by Dawson from the time they left Van Zandt county until

they were seized by the sheriff of Montague county. They were driven pretty hard some days, but not further than the necessities of the case required. I do not suppose that Dawson had the special permission of Hunter, Evans & Co. to drive the cattle through Montague county, but that it was being done under the general understanding with all parties when the cattle left Van Zandt county to be driven to Caldwell, Kansas.

17th Int'y. What was the understanding and agreement, if any, between pl'ffs and Dawson as to the destination of said cattle,
599 and what was your understanding from pl'ffs, if any, in regard thereto, and if said Dawson acted in any way with said cattle in controvention of said understanding or in any way disregarded it, how, and the circumstances thereof?

Answer. It was understood by L. W. Evans, who represented Hunter, Evans and Company, and Dawson that Dawson was to drive the cattle to Caldwell, Kansas, for sale unless he sold them before reaching that place, and I was to accompany the cattle and remain with them until sold and receive the proceeds as sales were made by —. Dawson's course in handling, driving, and disposing of the cattle were strictly in accordance with my understanding of the whole matter, except in this sale to Houston he only accounted to me the cost of the cattle sold instead of the price for which he sold them, he appropriating $260 of the proceeds of the sale to his immediate use, when I thought it ought to have been turned over to me and placed to his credit on his note, and the sale of some cows or
600 the exchange of them for some heifers which he lacked in filling a contract for a certain number of two-year-old heifers being turned into the herd in place of the cows traded out of it left the value of the herd the same or about the same.

Int'y 18th. State, if you know, whether or not any part of said cattle had been contracted — by said Dawson before starting out to be delivered to other purchasers. If yea, state how many of said cattle were so contracted for and to whom and when and at what place were they to be delivered; how far were they from the place of delivery when they were seized under the writ of sequestration in this case.

Answer. Dawson had made a contract with Mr. Allen to deliver him 1,050 two-year-old heifers and bulls at the Ponca agency in the Indian Territory, but I do not know exactly how many of the Oneal cattle were to be in on the contract. I suppose, however, there must have been about 350, as Dawson purchased about 700 from Houston and others for this contract. I do not know how far the cattle
601 were from the Ponca agency when seized under the writ, but I suppose it was 300 miles or about that distance.

Int'y 19th. How long were said cattle held under the writ of sequestration before the same were replevied?

Answer. The- were seized on the 2nd of June, 1880, and released on the 5th by order of the sheriff of Montague county, but the order did not reach me until the morning of the 6th of June.

Int'y 20th. State, if you know, if any of said cattle were lost during the time they were delayed by said seizure. If you answer that

there were cattle lost during said time, state how many of said cattle were lost and the value of the same and how they came to be lost.

Answer. I think I have answered as fully as necessary all of the foregoing interrogatories.

Int'y 21st. Please read over the foregoing interrogatories and your answers thereto, and if you find that you have omitted to answer them fully please attach your answer here, and in this con-
602 nection please state any fact or facts, within your own knowledge, which may be relative and pertinent to the matters about which you have been interrogated as if specially interrogated in relation thereto.

Int'y 22nd. Will you please state, if you know, whether or not there was any specified amounts agreed upon and fixed between Hunter, Evans & Co. and the City National Bank as the sum due them, respectively, from Oneal? If yea, then please state how much was agreed to be due Hunter, Evans & Co. and how much was agreed to be due the City National Bank out of the proceeds of said cattle. If Dawson's note or the participated proceeds of said cattle was in any manner prorated as between Hunter, Evans & Co. and the bank please state particularly and circumstantially what was said, what was said and by whom it was said, and what was done by and between the parties as to such prorating, giving the amounts that was agreed to be coming to each of said creditors, respectively, if there was such, as to the amount.

603 Answer. There was certain sums agreed upon and fixed between Hunter, Evans & Co. and the City National Bank of Ft. Worth as a basis for the *pro rata* distribution of the proceeds of the sale of the cattle sold by Oneal to Dawson for the benefit of H., E. & Co. — the *the* bank. Dawson gave his note for 19,033.00, of which Hunter, Evans & Co. & Mr. McCart, representing the bank as attorney of these parties, respectively, —. I do not remember all that was said or by whom it was said in this connection, but the above is what was done in the premises, and I was to carry out this agreement upon this basis.

Int'y 23rd. State whether the def't Dawson executed and delivered any note or other obligation for the purchase-money of said cattle. If yea, then state to whom said note or obligation was delivered and *you* has it now.

Answer. Dawson executed a note for $19,033.00 payable to Hunter, Evans & Co. & the City National Bank of Ft. Worth, which was delivered to me as the mutual agent of these parties, and I have it in my possession now.

604 Int'g. 24. If you answer that you now have the note in your possession, then please append a copy of the same to your answer to this interrogatory. Have you done so?

Ans. to 24th int. I have said that I have Dawson's note, and hereto attach or write a copy of the same as a part of my answer to this interrogatory, with the credits as they are endorsed on the note:

Copy.

$19,033.00. "WILL'S POINT, TEXAS, *May* 22, 1881.

One day after date, for value received, I promise to pay to the order of Hunter, Evans & Co. and the City National Bank of Fort Worth, Texas, at Forth Worth, Texas, the sum of nineteen thousand and thirty-three dollars, with interest, at the rate of ten per cent. per annum, from date until paid. This note is to be paid according to the terms and stipulations contained in a written contract entered into by and between John Dawson, Hunter, Evans & Co., and the City National Bank of Fort Worth, and dated March 20, 1880.

(Signed) J. M. DAWSON."

The first credit on said note is as follows:

"Received on the within note thirty-four hundred and nineteen dollars ($3,419) this May 22, 1880."

And signed—

"HENRY E. McCULLOCH, *Agent.*"

And the next is as follows:

"Received on the within note a draft drawn by Frank Houston for eighteen hundred and forty two dollars, payable on the 22d day of next month.

"May 25th, 1880."

And signed by—

"HENRY E. McCULLOCH, *Agent.*"

Int'g. 25. If there are any credits endorsed upon said note please state by whom said credits were endorsed and when they were so endorsed and who was present at the time said credits were so endorsed upon said note; and, in this connection, please state
605 whether you remember of having said anything at the time of the execution of said note by Dawson in reference thereto. If yea, in whose presence was it said and where?

Ans. to 25th int. I have given the credits endorsed upon the note in my answer to 24th interrogatory and the time of their endorsements, respectively. The first was written by Judge Watts, att'y for H., E. & Co., at Will's Point, at my request, in the presence of L. W. Evans, R. McCart, J. M. Dowson, as well as some other person or persons whom I do not now remember, nor do I now remember anything particularly that I said at the time, except asking Judge Watts to write just such a credit on the note as the parties desired which I could refer to and be guided by in making other credits on it after that time, and my recollection is that Judge Watts replied that it should be done in the usual form, and proceeded at once to write the credit you see copied in my answer to 24th int. This occurred in the office or room of the hotel at Will's Point, Texas, in presence of Judge Watts, L. W. Evans, Rob't McCart, John Dawson, and several other persons, but I do not now remember who they were.

Int'g. 26th. If in answer to latter part of preceding interrogatory you answer that you said anything at the time of the execution of said note in the office at the hotel at Will's Point by said Dawson, and that the same was said in the presence of Judge A. T. Watts, Lewis Evans, Rob't McCart, John Dawson, and others, please state, to the best of your recollection, what was said by you on the
606 occasion, and what was said by the other parties in regard thereto, if anything.

Cross-interrogatories:

1st. Is it not true that the cattle referred to in the direct interrogatories were delivered by John O'Neal to John Dawson about two miles south of Will's Point, Van Zandt county, in the absence of plaintiffs and their agents?

Ans. to X int. 1. I have already stated that the cattle were delivered to Dawson by O'Neal some two or three miles S. E. of Will's Point, and that none of the agents or attorneys of Hunter, Evans & Co. were present at the time of the final delivery, but were in Will's Point.

2nd. Is it not true that said cattle were so delivered without notice to plaintiffs or their agents, and were not said cattle driven by Dawson to a point two or three miles westward of Will's Point before Dawson and O'Neal came to Will's Point to sign the papers contemplated in the agreements attached to the direct interrogatories?

Ans. to X int. 2. There was no formal or regular notice given to the agents or attorneys of H., E. & Co. of the intended delivery of the cattle to Dawson by O'Neal at the time it was done, but it was understood by all parties that the delivery was to take place that evening at O'Neal's pens, when it was done, and Dawson sold 263 cows and calves, delivering them at that time and place, and drove the balance of the cattle through Will's Point, to a point some miles westward, before he and O'Neal came to Will's Point to close
607 up the paper contemplated in the contract hereto attached.

3rd. Were not said cattle being driven out of Van Zandt when Dawson came back to Will's Point to sign the papers contemplated by said agreements, and were not said cattle then on the move, being driven as aforesaid?

Ans. to X int. 3rd. The cattle had been started to be driven out of Van Zandt county, but had only been driven 6 or 7 miles when Dawson came back to Will's Point to sign the papers contemplated by the agreement. The herd was held at that point until the next morning, and then at an early hour moved on in the direction of their final destination (Caldwell, Kansas).

4th. State in detail all you know about the delivery of said cattle to Dawson; who was present when they were delivered; where was the delivery made; when; what was done with the cattle after the delivery; what was being done with said cattle at the time the bill of sale was being made by O'Neal to Dawson, and what at the time of the execution of the notes by Dawson to plaintiffs and the City National Bank of Fort Worth.

Ans. to X int. 4th. Some days before the time of delivery of the entire herd of cattle to Dawson by O'Neal, O'Neal put his hands to gathering cattle on the range, and as soon as several hundred head was gathered they were turned over to Dawson's hands, who were on the ground, and as O'Neal's hands gathered they turned over to Dawson's hands, who received and herded them in order to facilitate O'Neal in gathering and enable Dawson to make an early move with the cattle, this being the mode of general delivery, which continued for several days. I cannot say who was at any one of
608 the deliveries, but the final delivery was made on the 22 of May, some 2 or 3 miles S. E. of Will's Point, in Van Zandt county, Texas. As soon as the delivery was made a part of the cattle was sold to Houston and the balance was started to Kansas, and I think the bill of sale from O'Neal to Dawson and Dawson's note was executed while the cattle were within 6 or 7 miles of Will's Point and while they would have been considered on the move to Kansas.

5th. At the time said papers were being prepared and executed in Will's Point was not said John Dawson very impatient to get away, and did he not insist and urge that he be at once allowed to do what was required of him so that his presence could be dispensed with?

Ans. to X int. 5th. At the time the papers were being prepared, settlements being made, etc., Dawson showed a good deal of impatience at any and all delays, urging the necessity of him being with the cattle just at the commencement of the drive, and the importance of an early start in order that he might reach the Ponca agency by the time specified in his contract with Allen for the delivery of the heifers and bulls, and upon which he had put up a $2,000 forfeit in cash.

6th. Did not said Dawson leave Will's Point and go to the herd of cattle before the difference between John O'Neal and plaintiffs had been adjusted in respect to the amount of plaintiffs' claim against said O'Neal, and before any disputed amount had been secured by O'Neal, and did not Dawson leave Will's Point knowing that these things had not been done?

609 Ans. to X int. 6th. As soon as Dawson signed his note my recollection is that he started to the herd, which was before the difference between O'Neal and Hunter and Evans had been adjusted fully, but not before it was understood that there was controversy or contention between the parties as to the amounts claimed by H., E. & Co. and the amounts admitted to be due by O'Neal, and that they were unsettled.

7th. Did not O'Neal, in your presence, say to Watts, or to Watts and you, in the presence of Dawson, that he had cattle not gathered more than sufficient to pay the amount of plaintiffs' claim disputed, and did he not agree to arbitrate, on the following Tuesday after the Saturday on which the cattle were delivered with plaintiffs, the said disputed amount, and to immediately pay with cattle then ungathered the amount to be awarded? If not, state what was said

and done in respect to said disputed amount by O'Neal, and what part was said in the presence of Dawson.

Ans. to X int. 7th. On the day before or the morning of the final delivery of the cattle O'Neal said to me, in the presence of Dawson, that he had plenty of cattle not gathered on the range to pay off the balance of the debt to H., E. & Co. and the bank, and if Dawson would wait a few days longer he would gather them for him. Dawson replied that he could not wait longer than Saturday, as he must reach Ponca agency by a certain day or forfeit $2,000. Either O'Neal or his attorneys (I am not certain which) said, in my presence and in the presence of Dawson, the evening that Dawson gave his note for the cattle delivery, that he had ungathered cattle in the range sufficient to pay off the amount in dispute between
610 him and H., E. & Co., and that he would arbitrate the matter of difference with them in a few days, and Tuesday, I think, was the day agreed upon, and that he would then gather the cattle and deliver them to Dawson or any other person selected by H., E. & Co. to receive them.

8th. Did not Oneal say at Will's Point, in your hearing, that if Dawson would wait a few days he could gather up cattle enough to secure the debt due the bank and plaintiffs in full? Was said statement or any similar statement made in the presence of Dawson?

Ans. to X int. 8th. I have answered this question in my answer to X int. 7th.

9th. Is it not true that Dawson sold some of the cattle delivered to him by Oneal after he had driven them out of Van Zandt county and before they were seized in Montague county? If so, state to whom, when, where, how many, what kind, at what price, and who received the proceeds of said sale. Did you, as the agent of plaintiffs and of the City National Bank, receive said proceeds? If not, state why you did not. Were you present at said sale; if not, where were you? Did you know of the sale before it was made? Did you ever get all the proceeds of said sale; if not, how much did you not get, and — why you failed to get it? State all about said sale, and all about any others that may have occurred, answering each of the questions in this int'g. with reference to each sale that occurred before the seizure of the cattle and after they had been driven out of Van Zandt county.

Ans. to X int. 9th. Dawson sold 100 beeves and 4 cows to Frank Houston at his ranch in Kaufman county on the 26th of May, 1880, the beeves at $20 per head, the cows at $15 each. The sale
611 amounted to $2,060. Dawson accounted to me for $1,842 of the proceeds of said sale as the amount which should be paid over to me on his contract with H., E. & Co. and the bank, and retained the other $218 as his portion of the proceeds of the sale. When this sale was made I was absent at Terrell, where I was gone to collect money on the $3,419 draft which I had received from Dawson at Will's Point. The cattle were being delivered to Houston when I reached the herd, and I immediately asked Mr. Dawson about the sale, and especially about the money to be paid for the cattle, as I found that I would have to go to Terrell, 12 or 14 miles

back or off the route, to collect a draft. He replied it was a cash sale; that Houston was a monied man, and if he did not have the money in the house he could place it at McKinney or Sherman, which was near our line of travel, and that I would not be put to any trouble about the money; but when we called on Mr. Houston the next morning for the money, the delivery having been made late in the evening, he said he had not expected to pay any money for them cattle, but supposed that he was getting them as a payment for the two-year-old heifers & bulls he had sold and delivered to Dawson. This I could not consent to, and I then agreed with Mr. Houston to take his draft on Munhall & Scalling, of St. Louis, for the $1,842.00 which Dawson agreed to pay over to me as the cost of the cattle, he considering that he had a right to retain the overplus, under his contract with H., E. & Co. and the bank, and, although I differed with him in the construction of the contract, did not insist upon his strict compliance with it in this instance, as there was a sufficient amount of cattle still left to secure the payment of his note, but notified him that in all sales made after that the full amount of the proceeds would be demanded until his note was paid, to which he did not object particularly, but said he construed the contract differently.

612

10th. With respect to every sale referred to in the above interrogatory, state all that was said or done by Dawson; if he failed to turn over to you the entire proceeds of any such sale, state what, if any, excuse he made for not doing so. Did you ask him to pay over such proceeds; if not, why did you not? If you did, state all he said on the subject.

Ans. to X int. 10th. I have answered this in my answer to X 9, in which I have referred to the only sale of cattle that Dawson made after we left Will's Point—before the seizure of the herd in Montague county.

11th. Did Dawson swop or exchange any of said cattle after leaving Van Zandt county and before the seizure in Montague; if so, when, where, to whom, how many, what kind, for what kind, on what terms? Were you present? Did you know of it before it was done? Did he get anything besides cattle in exchange; if so, what? If money, what did he do with it? Did he deliver — to you; if not, why not? State everything that either you or he did and said in respect to said exchange, and, if more than one exchange, answer the foregoing question with reference to each such transaction.

Ans. to X int. 11th. I left the herd about the south line of Cooke county to go to Gainesville to get our mail matters and to see L. W. Evans, if he had reached that point; was absent from the herd 2 or 3 days, and while I was absent Dawson exchanged some cows for two-year-old heifers. He informed me that he got one heifer and two dollars for each of the cows, all of which I understood he took in heifers, and that he had gotten 28 head in this trade. If he stated the number of cows he traded off I do not remember it. The 28 heifers was put in the herd in place of the cows taken out, but Dawson showed some disposition afterward to disregard this, as he, in a letter to the "boss" of the herd, Mr. Smith,

613

instructed him to cut out all the two-year-old heifers except those in the O N or O'Neal brand and have them ready to send forward to the Ponca agency in case he failed to replevy the cattle; but as he replevied the cattle and reached the herd just as Smith commenced the cutting *and* this movement was fully developed. I was not present when the exchange was made; do not know the name of the party it was made with. Dawson gave me no money in this case and I suppose he got none, though I am not sure of that, as he was not very definite in his report of the transaction to me. This was all the exchange that was made by Dawson, to *me* knowledge, before the cattle were seized and replevied.

12th. Were you present when the sheriff levied the writ of sequestration in Montague county? If so, state what was done. Were said cattle penned or herded by the sheriff? If herded, state who acted as drovers or herders for said sheriff.

Ans. to X int. 12th. I was not actually present, but within
614 a half a mile or a mile when the sheriff of Montague county served the writ on Dawson and attached the cattle, but come up in a few moments afterwards. After seizing the cattle the sheriff placed them or continued them in my charge, at the suggestion of L. W. Evans, as the representative of Hunter, Evans & Co., with the consent of Dawson, and I held them on the prairie with Dawson's hands and horses, under the direct supervision and management of Mr. Smith, who was Dawson's "boss."

13th. How long were said cattle in the hands of the sheriff? Where were you during said period, and what were you doing? Where was Dawson when the levy was made?

Ans. to X int. 13th. The cattle was seized by the sheriff on the 2nd day of June and were released by his order on the 5th of June, 1880; but the order did not reach me until the morning of the 6th June, making about four full days. I had charge of the cattle as the agent of the sheriff, and was with the cattle in Montague county, Texas, and within from 4 to 7 miles of "Red River station," on Red River during this time. Dawson was present when the levy was made.

14th. How did the sheriff keep said cattle during the time they were in his charge? State fully and in detail all that he did with them during said period.

Ans. to X int. 14th. I have answered this in my answer to 12th and 13th X interrogatories fully.

15th. To what point on Red River were said cattle being driven at the time of the levy?

Ans. to X int. 15th. The cattle were being driven to Red River station, on Red River, when they were levied upon by the sheriff.

615 16th. How far from Red River were said cattle at the time of the levy?

Ans. to X int. 16th. Red River was considerably swollen at the time the cattle were levied upon, the rise being several feet, but not to the top of the bank at the cattle crossing on the south side by several feet. Several herds of cattle were waiting to cross when the

cattle of Dawson's was levied upon, and none had crossed for three or 4 days, and none did cross until the 6th of June, which was the day Dawson took charge of his herd under the replevy bond. I do not think it was impossible to cross the river with cattle at any time during this rise, but good cattle men who had herds at this point did not cross until the river had fallen several feet, and the 6th of June was the first day that any of these parties undertook to cross it with their cattle. The cattle were within 5 or 6 miles of Red River station, on Red River, when they were levied on.

17th. What was the condition of said Red River at the date of the levy, and how long did it remain in that condition? Was it not swollen with recent rain, and was it not impossible to cross said river at the point to which said cattle were being driven at the time of said levy and for several days thereafter?

Ans. to X int. 17th. I have answered fully in my answer to X int. 16th.

18th. Did you go with the cattle after Dawson replevied them; if so, by what arrangement and with whom did you accompany said herd? Who contracted with you to go on with them, and on what terms? For what purpose were you to go on?

616 Ans. to X int. 18th. When the cattle were levied upon by the sheriff L. W. Evans and a Mr. Sampee, of Hunter, Evans & Co., were present, and were asked by me what effect the seizure would have upon my employment, and they said that they knew their house did intend that it should operate as a discontinuance, and though if Dawson replevied they would need me, with L. W. Evans, at Caldwell, the point to which the cattle were being driven. When Dawson replevied the bank notified me that my agency had ceased upon their part, and as I received no notice from Hunter, Evans & Co. to the same effect concluded that they wanted me at Caldwell, and I proposed to Dawson to travel with the herd and pay my proportion of the provision bill if he would haul my baggage and care for my horse (which was the property of Hunter, Evans & Co.). He declined the acceptation of any pay, and invited me to continue with the herd as his guest. This I accepted, and crossed into the Indian Territory with the cattle. Soon after this (next day, I think) Dawson returned to Texas to go to his ranche and move another herd to Kansas, and, as I was traveling with his cattle, asked me to take the general supervision of them and the hands, and especially to attend to the delivery of the two-year-old heifers to Mr. Allen, at the Ponca agency, and proposed to pay me at the rate of $50.00 per month for my services during the time I was engaged in his service. This I agreed to, as I did not consider that it interfered with my engagement with the other parties. A day or two after this Mr. Ellis came to the herd with a bill of sale from Dawson to the cattle, made to the City National Bank of Ft.

617 Worth, and their power of att'y to make title to cattle as sold by Dawson, and receive the proceeds of the sale for the bank. This, in my judgment, superseded my agency under Dawson, and I traveled with the herd, looking to Dawson's interest in the management of the hands and cattle and aiding Mr. Ellis until the heifers

were delivered to Mr. Allen by Mr. Ellis, and then left the herd near Haina ranche, in the Indian Territory, and went on to Caldwell, in Kansas.

19th. Where were said cattle driven after they were replevied by Dawson? Did they cross Red River; if so, how long after they were replevied, and what was then the condition of the river?

Ans. to X int. 19th. We drove across Red River at Red River station and on the cattle trail to Caldwell, Kansas about two days after they were replevied. The river had fallen several feet and was then sufficiently down to enable cattle to cross safely.

20th. How do you know that any of said cattle were lost while they were in the hands of the sheriff? Did you count them before the levy; if so, when and where and who assisted you? Did you count them after the levy; if so, when and where and who assisted you? How many cattle were so lost by the sheriff?

Ans. to X int. 20th. I do not know that any cattle was lost while in the custody of the sheriff, and do not believe that there was any lost during that time, as they were carefully herded and had no stampedes or runs among them, but I cannot say positively, as I did not count them when the sheriff levied on them nor when I turned them over to Dawson on the order of the sheriff, and they
618 were not counted, to my knowledge, until the 2nd or 3d day after they crossed Red River, when it was ascertained that the herd was several head short. The cattle crossed Red River under the immediate management and control of Mr. Dawson, who first attempted it on the evening of the 6th of June, and got from 2 to 3 hundred of them bogged down, and the balance of the herd turned back to the south side of the river, when, for want of sufficient force to pull the bogged ones out and herd the others, they scattered a good deal, and it was at this time and place that I think the cattle got away that were absent from the herd when they were first counted after they were seized by the sheriff.

21st. After crossing said cattle over Red River where were they driven to? State fully the route taken and the destination.

Ans. to X int. 21st. The cattle were driven in the direction of Caldwell, Kansas, along the trail usually traveled by the herds that are driven to Dodge, Caldwell, &c., and I left them within 2 miles of that trail near Hair's ranche, in the Indian Territory, with the understanding that they were to be driven to Caldwell, Kansas, unless they were sold before reaching that place.

22nd. You will now please give an account in full of the sales of said cattle; to whom they were sold, where, when, in what lots & kind, at what price, by whom sold, who received the proceeds of sale, the gross amount of same proceeds, and what was done with said proceeds. State with reference to each sale made the number sold, the place and date of sale, the name and residence of purchaser, the price and kind sold.

619 Ans. to X Int. 22nd. I have answered this interrogatory fully in answer to other questions, but will repeat that the first sale was made out of these cattle by Dawson at Will's Point to Houston (as I understood it) of 263 cows and calves for $3,419.00,

as reported by him, and the money or proceeds of the sale turned over to me as the agent of Hunter, Evans & Co., of St. Louis, and the City National Bank of Ft. Worth, Texas. These proceeds was paid over by me to the parties I represent, viz., $1,668.50 to Hunter, Evans & Co. and $1,750.50 to the City National Bank of Ft. Worth, including the cost of the exchange I purchased to make remittance to them, respectively. The second and only other sale made was made by John Dawson to Frank Houston in Kaufman county of 100 beef steers at $20.00 each and 4 barn cows at $15.00 each, making the gross amount of this sale $2,060.00, of which he retained $218.00, and I took Frank Houston's draft on Mulhaul & Scaling for $1,842.00 to Hunter, Evans & Co., of St. Louis, payable in some 30 days, and sent it to them by mail and drew a draft on them (H., E. & Co.) in favor of the City National Bank of Ft. Worth for $939.88, which was the proportion to which the bank was entitled under their *pro rata* agreement with H., E. & Co. This draft was payable the day after the Houston draft was due and was to be paid out of the proceeds of that draft, but when presented to Hunter, Evans & Co. for their acceptance they declined to accept, and if they have ever paid that draft I do not know it.

23rd. State fully and particularly what became of the proceeds of said cattle sales as far as you know or have learned from Dawson.

620 Ans. to int. 23rd. I have stated fully all I know or learned from Dawson what became of the proceeds of all the sales made of the cattle while I had any connection with them in my answer to X int. 22, and have stated in another place what I knew about the cattle exchange or swopped for in Cooke county. The only other sale of which I have any knowledge was under the contract Dawson made with Allen for the two-year-old heifers, and do not know the number of O'Neal cattle put in on that contract, but I suppose them to be about 350 head, at $12.50 per head, I think, and as Mr. Ellis delivered these cattle to Mr. Allen for Dawson and had the authority from the bank to receive the money from Dawson or the purchaser of the cattle as they were sold, I suppose he did receive the money for these cattle, and I suppose paid it over to the party to whom it was properly due from him. I have answered all the interrogatories and X interrogatories correctly according to my information derived from my memorandum, when I have them, and my recollection, when I have no memorandum, and have tried in them to do all parties justice.

Exhibits "A" & "B" to McCulloch's answers are already copied; "A" on pages 122 to 126 and "B" on pages 126 to 129 of this transcript.

621 *Final Decree of Court.*

HUNTER, EVANS & Co. }
vs. } Ch'y. No. 21.
JNO. A. ONEAL *et al.* }

MONDAY, *May 18th*, 1885.

On this day came on to be heard the defendants' exceptions to the jurisdiction of this court based on the fact that none of the defendants reside in Montague county, Texas, in the district court of which county the said suit was commenced and from which court it was removed by plaintiffs, and the said exceptions, being considered by the court, were adjudged not well taken and were overruled and defendants excepted; and then came on to be heard the plea to the jurisdiction filed by the defendant Oneal and based upon the charge that none of defendants reside in Montague county, Texas, in the district court of which this suit wasc ommenced, and, the said plea being heard and the evidence adduced in support of the same, it was considered by the court and so adjudged that said plea be overruled, and to this ruling the defendants excepted. On this day came on to be heard the said cause on the pleadings and evidence, and it was considered by the court that the plaintiffs and the defendants, The City National Bank of Fort Worth, were entitled to a distribution *pro rata* according to their actual demands
622 against John A. Oneal of the proceeds of the securities held by them against the said Oneal; that on May 22nd, 1880, the said Jno. A. Oneal was indebted to the plaintiffs in the sum of 18,333.68 dollars and to the said defendant bank in the sum of 10,339 & $\frac{85}{100}$ dollars, and that plaintiffs were entitled at said date, out of the Dawson note, to the sum of 12,169.64 dollars, less the sums received by them from the proceeds of said note, to wit, the sum of 1,668.49 dollars, paid May 26th, 1880, and the sum of 1,842 dollars, paid June 26th, 1880, with interest from May 22nd, 1880. It is, according-, considered, adjudged, and decreed that plaintiffs, R. D. Hunter, A. G. Evans, and M. P. Buel, composing the firm of Hunter, Evans & Co., do have and recover of and from the defendant, John Dawson, and the surities upon his replevy bond, John Nichols, S. W. Lomax, W. J. Boaz, J. F. Ellis, and W. Scott, the sum of 8,659.15 dollars, principal, and the sum of 4,329.67 dollars, interest, making a total of 12,988.82 dollars, which is to bear interest from this date at the rate of 10 per cent. per annum, and all costs of collecting the same, and for which execution may issue at the expiration of ten days from the entry of this decree.

And it further appearing to the court that plaintiffs have
623 received herein the sum of 2,424.56 dollars in the value of cattle sequestered herein and replevied by plaintiffs, of which said sum the said City National Bank of Fort Worth is entitled to the sum of 1,311.50 dollars, *and* it is accordingly considered by the court and so ordered, adjudged, and decreed that said defendant bank do have and recover of and from said plaintiffs the said sum, for which execution may issue at the expiration of ten days from

the entry of this decree; and it further appearing to the court that the defendant Oneal, of the cattle sequestered, replevied 110 dollars' worth on the 20th July, 1880, it is thereupon considered and so ordered, adjudged, and decreed that plaintiffs do have and recover of and from Mary Oneal, administratrix of the estate of said John Oneal, deceased, made party hereto by bill of revival, and W. G. Criswell, L. J. Bridges, and F. C. Wells, sureties on the replevy bond of said Oneal, the said sum of 110 dollars and interest thereon at the rate of 8 per cent. per annum from July 20, 1880, and all costs of collection, for which execution may issue at ten days from the entry of this decree, & the proceeds of said collection shall be distributed between plaintiffs and the defendant bank *pro rata*—that is, the said plaintiffs shall receive $\frac{4,613.81}{7,215.97}$ of said proceeds, and
624 the said bank shall receive the remainder, $\frac{2,602.16}{7,215.97}$; and it is further considered and so ordered, adjudged, and decreed that said plaintiffs do have and recover of and from the estate of said John Oneal, to be paid in due course of administration, the sum of 4,613.81 dollars and all the costs of this suit, less any sum that may be received by said plaintiffs from the execution to be issued against the sureties of said Oneal and hereinbefore provided, and in the meantime the costs of this suit shall be paid by plaintiffs and the defendant bank *pro rata*, according to their demands against said Oneal as found to exist on May 22nd, 1880, and hereinbefore set forth.

(Signed) A. P. McCORMICK, *Judge.*

Petition for Allowance of Appeal.

In United States Circuit Court for the Northern District of Texas, at Dallas. In Chancery.

HUNTER, EVANS & CO. *vs.* JOHN A. ONEAL *et al.*

And now in this case, in which Hunter, Evans & Co., a firm composed of R. D. Hunter, A. G. Evans, & M. P. Buel, are plaintiffs and John Dawson and the City National Bank of Fort Worth and M. J. Oneal, as the administratrix of the estate of John A. Oneal, deceased, are defendants, come John Dawson and the City National
625 Bank of Fort Worth, and pray the court that they be allowed an appeal of this cause as to themselves and against the plaintiffs, R. D. Hunter, A. G. Evans, and M. P. Buel, to the Supreme Court of the United States, and that this court fix the amount of a supersedeas appeal bond to be given by them for such appeal, and that an order allowing them such appeal be entered in the minutes of this court, and that upon their executing and filing such appeal bond all further proceedings under said decree be suspended, to abide the decree of the Supreme Court of the United States, and as in duty, &c.

(Signed) LEAKE & HENRY,
Solicitors for Defendants, John Dawson & The City National Bank of Ft. Worth.

(Endorsed:) No. 21. Chancery. Hunter, Evans & Co. *vs.* John A. Oneal *et al.* John Dawson & the City National Bank of Ft. Worth pray allowance of appeal to the Supreme Court. Filed May 22d, 1885. A. J. Houston, clerk, (signed) by Jas. D. Adams, deputy.

Order Allowing Appeal, &c.

HUNTER, EVANS & Co. *vs.* JOHN A. ONEAL *et al.* } Chancery. No. 21.

MONDAY, *May 25th*, 1885.

Be it remembered that on this the 25th day of May, in the year of our Lord one thousand eight hundred and eighty-five, in this
626 case, in which Hunter, Evans & Co., a firm composed of R. D. Hunter, A. G. Evans, and M. P. Buel, are plaintiffs and John Dawson and The City National Bank of Fort Worth and M. J. Oneal, as the administratrix of the estate of John A. Oneal, are defendants, two of said defendants—that is to say, the said John Dawson and the City National Bank of Fort Worth—came into open court, by their counsel, and prayed that they be allowed an appeal of this cause against the plaintiffs, R. D. Hunter, A. G. Evans, and M. P. Buel, to the Supreme Court of the United States, which appeal is now by the court allowed, and the supersedeas appeal bond to be given by said defendants is fixed at the sum of eighteen thousand dollars.

(Signed) A. P. McCORMICK, *Judge.*

Appeal Bond.

Know all men by these presents that we, The City National Bank of Fort Worth and John Dawson, as principals, and A. M. Britton and G. R. Newton, as sureties, are held and firmly bound unto R. D. Hunter, A. G. Evans, and M. P. Buel, partners under the firm name of Hunter, Evans & Co., in the full and just sum of eighteen thousand dollars, to be paid the said R. D. Hunter, A. G.
627 Evans, and M. P. Buel, their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 28th day of May, in the year of our Lord one thousand eight hundred and eighty-five.

Whereas lately, at a term of the circuit court of the United States for the northern district of Texas, at Dallas, in a suit depending in said court between the said R. D. Hunter, A. G. Evans, and M. P. Buel in their firm name of Hunter, Evans & Co., as plaintiffs, and M. J. Oneal, as administratrix of the said *of* John A. Oneal, deceased, and The City National Bank of Fort Worth and John Dawson, as defendants, a decree was rendered against the estate of the said John A. Oneal and The City National Bank of Fort Worth and John Dawson, and the said City National Bank and John Dawson having obtained

from the judge of the said circuit court an allowance of appeal from said decree to the Supreme Court of the United States and caused said allowance to be entered in the minutes of said circuit court on the 25th day of May, in the year of our Lord one thousand
628 eight hundred and eighty-five, to reverse the decree in the aforesaid suit, said allowance of appeal having been procured in open court at the time at which said decree was rendered:

Now, the condition of the above obligation is such that if the said City National Bank of Fort Worth and John Dawson shall prosecute their said appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

Witness our hands and scrolls for seals this the 28th day of May, 1885.

(Signed) JOHN DAWSON. [SEAL.]
" THE CITY NATIONAL BANK OF FORT WORTH, TEXAS,
By A. M. BRITTON, *P't.* [SEAL.]
" A. M. BRITTON. [SEAL.]
" G. R. NEWTON. [SEAL.]

Sealed and delivered in presence of witnesses—
C. G. McHATTON.
E. C. SCHNEIDER.

Approved by—

A. P. McCORMICK,
Dist. Judge.

May 29th, 1885.

(Endorsed:) In chancery. No. 21. Hunter, Evans & Co. *vs.* John A. Oneal *et al.* Appeal bond of defendants, John Dawson and The City National Bank of Fort Worth. Filed May 29th, 1885. (Signed) A. J. Houston, clerk.

629 *Assignment of Errors.*

In the United States Circuit Court, Northern District of Texas, at Dallas. In Chancery.

HUNTER, EVANS & CO.

vs.

THE CITY NATIONAL BANK OF FORT WORTH & JOHN DAWSON & JOHN ONEAL.

Appealed to the supreme court.

And now come defendants, The City National Bank of Fort Worth and John Dawson, in the above cause, and say that errors were com-

mitted on the hearing thereof in the circuit court, for which said cause should be reversed, as follows, to wit:

1st. The court erred in that it rendered its decree in favor of plaintiffs against defendant, John Oneal, for a sum of money greater than the evidence showed to be owing them by him.

2nd. Because the court erred as to the defendant, The City National Bank of Fort Worth, by giving to plaintiffs a larger *pro rata* of the money due by the defendant, John Dawson, by his note given for the purchase-money of the cattle, than the evidence justifies, and because the evidence shows that all parties, knowing and agreeing that the sum due by defendant Oneal to plaintiffs was in dispute, consented by their written agreement to distribute the proceeds of said note on the basis of the undisputed debts due by defend-
630 ant Oneal to plaintiffs and to the City National Bank of Fort Worth, respectively, which undisputed amounts were duly ascertained, agreed to, and acted upon by the respective parties, while the decree of the court makes the distribution of the money upon the basis of the whole amount of the debt claimed by plaintiffs and the whole amount claimed by the City National Bank, it knowing the fact that a large part of plaintiffs' debt was disputed and that a settlement and distribution of said money had been agreed upon between all the parties in direct recognition of such disputed amount.

3rd. Because as to the defendant, John Dawson, the decree is contrary to the evidence in this, that the said John Dawson's purchase of the cattle was based and directly depended on the positive written consent and agreement of all the parties by which the prompt payment of his note bearing ten per cent. per annum was provided for out of the proceeds of the cattle for the purchase-money of which his note was given, and while the said Dawson was performing said contract plaintiffs violated it, sued and seized the cattle, forced him to incur delay and damage, and to give heavy bond, with security, to regain possession of the cattle, and to be delayed for five years by the pending of the litigation brought about by plaintiffs, and
631 in the end he not only recovered no damage, but is required by the decree to pay interest at the rate of ten per cent. per annum of the whole period, and all without fault upon his part and without advantage to him.

4th. Because the court erred in overruling defendants' pleas to the jurisdiction of the district court of Montague county and of the United States circuit court at Dallas, Texas.

(Signed) LEAKE & HENRY,
Att'ys for the City National Bank of Fort Worth & John Dawson, Defendants.

(Endorsed:) No. 21. Chancery. Hunter, Evans & Co. *vs.* John Oneal, The City National Bank of Fort Worth, and John Dawson. Assignment of errors. Filed September 15, 1885. A. J. Houston, clerk, by Jas. D. Adams, deputy.

Clerk's Certificate.

UNITED STATES OF AMERICA,
Northern District of Texas, at Dallas:

I, A. J. Houston, clerk of the United States circuit court for the northern district of Texas, at Dallas, do hereby certify that the foregoing 630 pages and 13 lines contain a full, true, and correct transcript of the record in the case of Hunter, Evans & Co. *vs.* John A. Oneal *et al.*—No. 21 on the equity side of said court—made up pursuant to rules of the Supreme Court of the United States.

632 In testimony whereof I have hereunto affixed the seal of said circuit court, at Dallas, Texas, and the signature of the clerk thereof this 8th day of October, A. D. 1885.

{ The Seal of the U. S. Circuit Court, Northern Dist. Texas, Dallas. }

A. J. HOUSTON,
Clerk of said Circuit Court.

Endorsed on cover: N. Texas C. C. U. S. No. 387. The City National Bank of Fort Worth and John Dawson, appellants, *vs.* R. D. Hunter, A. G. Evans, and M. P. Buel, partners under the firm name of Hunter, Evans & Co. Filed October 13, 1885.